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BEFORE THE

Federal Communications Commission

Washington, D. C.

Docket Nos. 9402, 9403, 9404, 9405, 9468 & 9469

In the Matter of the Applications of

G. A. RICHARDS, Transferor, et al.,
KMPC, THE STATION OF THE STARS, INC., Los Angeles, Calif.
WJR, THE GOODWILL STATION, INC., Detroit, Michigan
WGAR BROADCASTING COMPANY, Cleveland, Ohio

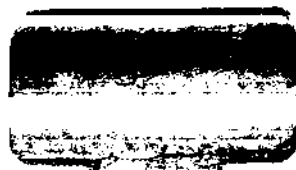
**BRIEF IN SUPPORT OF MOTIONS
AND PETITION UNDER RULES 1.386
AND 1.389, AND FOR OTHER RELIEF**

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REARDON-PARSHALL CO.—DETROIT

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BEFORE THE
Federal Communications Commission
Washington, D. C.

In re Applications of

G. A. RICHARDS

Transferor

and

HARRY J. KLINGLER, LAWRENCE P.

FISHER and JOHN A. HANNAH

Transferees

For consent to the transfer
of control of

KMPC, THE STATION OF THE STARS,
INC., Los Angeles, California;

WJR, THE GOODWILL STATION, INC.,
Detroit, Michigan;

WGAR BROADCASTING COMPANY,
Cleveland, Ohio

Docket No. 9402
File No. BTC-756
Docket No. 9403
File No. BTC-754
Docket No. 9404
File No. BTC-755

KMPC, THE STATION OF THE STARS,
INC., Los Angeles, California

For renewal of license of Radio
Station KMPC, Los Angeles,
California

Docket No. 9468
File No. BR-18

WJR, THE GOODWILL STATION, INC.,
Detroit, Michigan

For renewal of license of Radio
Station WJR, Detroit, Michigan

Docket No. 9469
File No. BR-331

WGAR BROADCASTING COMPANY
Cleveland, Ohio

For renewal of license of Radio
Station WGAR, Cleveland, Ohio

Docket No. 9405
File No. BR-283

**BRIEF IN SUPPORT OF MOTIONS
AND PETITION UNDER RULES 1.386
AND 1.389, AND FOR OTHER RELIEF**

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STATEMENT

The hearing on these applications has been recessed. This affords an opportunity to the Commission to give earnest consideration to issues of great importance to the public which have developed.

There are six applications involving four separate matters: the separate applications of the three stations, KMPC, WJR and WGAR, for renewal of their licenses, and the applications of Mr. G. A. Richards to transfer control of his stock to those three stations. The hearing on the application of KMPC is almost completed, and it is appropriate that the Commission order the Examiner to conclude the KMPC case and adjourn the hearing on WJR and WGAR until the Commission has considered these motions. Although there are a few additional witnesses to be heard with respect to KMPC when the hearing resumes, Commission Counsel agreed that any motions Applicants intended to make at the close of the KMPC case could be made during this recess. (Pre-Hearing Conference - November 1, 1950 - R. 14930-6)

This brief does not purport to cover all of the issues involved in the case, nor to refer to all the evidence and rulings pertinent to a full consideration of those issues. It does purport to present sufficient argument and citations to the record to demonstrate to the Commission that it should order the hearing adjourned and consider these important questions. If such an order is issued, a full brief can then be submitted, to which Commission Counsel may reply.

History of Proceedings

(a) Original Charges

The proceedings trace back to a complaint dated February 28, 1948, filed by The Radio News Club, a Los Angeles organization, with the Federal Communications Commission. This complaint (Comm. Ex. 224, R. 2456-62), incorporating affidavits of Clete Roberts and other former members of the news staff of KMPC, related solely to station KMPC and alleged activities of Mr. G. A. Richards in connection with that station. On March 5, 1948, The Radio News Club forwarded additional material relating solely to KMPC (Comm. Ex. 225, R. 2464). In this correspondence, there was no mention of WJR and WGAR until March 15, 1948, when James Roosevelt, backing The Radio News Club, called the Commission's attention to the fact that Mr. Richards controlled WJR, Detroit, and WGAR, Cleveland. (App. Ex. 65).

(b) Lengthy and Costly Investigation.

On March 24, 1948, the Commission announced (Public Notice 19779) that on March 19 it had "authorized an investigation of the matter covered by the complaint [filed by The Radio News Club] with respect to the operations" not only of KMPC but also of WJR and WGAR.

Even before the announcement of an official investigation, the management of KMPC undertook within the station to ascertain whether there was any conceivable basis for the charges. All scripts of newscasts that had not been disposed of were removed from storage and arranged in order (R. 516-19, 6305-17, 13609-13). Other records of the station were studied (R. 542-50). Shortly thereafter

investigators from the Commission visited the station in Los Angeles (Comm. Ex. 24). The management ordered that every cooperation be shown them (R. 2414). They were given an office. They were given all scripts. Access was afforded to the logs and the files (R. 585-86). Employees were interrogated at length. And all this without KMPC being given any charges or even knowledge of what was being done or said by the Commission investigators.

The Commission staff conducted a similar investigation at WJR and WGAR. But the burden fell upon KMPC and the spotlight was on KMPC, for it was in connection with KMPC that the charges had been made. And Mr. Richards, since his health broke down in 1938, had lived in the Los Angeles area (R. 2293-2294), taking a particular interest in building up KMPC from a small operation in Beverly Hills to a leading position among radio stations in Southern California (R. 2299). Moreover, unlike WJR and WGAR (both CBS affiliates), KMPC was an independent station wholly dependent on its own programming and enterprise. With a staff already small and overburdened, it had the almost insuperable burden of preparing to show—in the only way it could show—by the excellence of its programs, its unimpeachable reputation and its whole-hearted acceptance by the listening audience in Southern California—that the charges were unfounded. It had to sustain this burden without knowledge of what the Commission investigators were obtaining, without opportunity to cross-examine witnesses whom they were questioning, and without any notice of the charges other than what appeared in the trade press.

(c) Submission of Statement by Richards and Documentary Material by the Stations.

On August 12, 1948, the Commission forwarded to Mr. Richards the complaint of The Radio News Club and its attached affidavits, requesting from him a personal statement as to the matter. Mr. Richards promptly filed an affidavit, dated August 23, 1948 (Comm. Ex. 15), accompanied by an affidavit by Frank E. Mullen, who in the preceding May and June had assumed the presidency of the three stations. In this affidavit, Mr. Richards described his extraordinary career in radio, his aims for his stations and his innocence of the charges hurled against him. At the same time voluminous exhibits were submitted to the Commission showing for KMPC (Comm. Ex. 170) and the other stations the record of service in the public interest in every aspect of a radio station's activity. Accompanying the material was a report by the distinguished newspaperman, Mr. E. Z. Dimitman, on his study of the available newscast scripts of KMPC, undertaken in May 1948 at the request of KMPC (R. 2161-66). Mr. Dimitman's conclusions were that the newscasts of KMPC were balanced in presentation of the news; fair and impartial, giving all sides of controversial subjects; not slanted, prejudiced or biased for or against any individual, group or philosophy; and in no way confirming any one of the several charges made by the complaining ex-employees (Comm. Ex. 15, R. 2322-3).

(d) Commission's Order for Public Hearing.

On November 12, 1948, the Commission issued an order (Docket No. 9193) for a public hearing involving KMPC, WJR and WGAR, pursuant to Section 403 of the Communications Act before Commissioner Webster upon certain issues created by The Radio News Club complaint as to KMPC. These issues involved (1) whether Mr. Richards issued instructions as alleged; (2) the extent, if any, to

which his employees refused to carry out the alleged instructions and, if so, were disciplined; (3) the extent, if any, to which the facilities of his stations were used to carry out the alleged instructions. Shortly thereafter, Commissioner Webster set a hearing at Los Angeles on February 21, 1949 which was subsequently postponed to March 16, 1949.

(e) Mr. Richards' Petition for a Personal Hearing.

On February 24, 1949, Mr. Richards submitted a petition requesting the opportunity to be heard in person and to subject himself to interrogation by the Commission itself (Comm. Ex. 16). His purpose was frankly stated to be to avoid continuance of the drastic damage, from the point of view of revenue, reputation and staff morale, caused by the charges and the year-old investigation. On February 25, 1949, the Commission denied the petition (Commissioner Hyde dissenting, and Commissioners Walker and Sterling not participating).

(f) Preparation for March 1949 Hearing.

In preparation for the hearing in Los Angeles, rescheduled for March 23, 1949, the Commission's staff conducted a further investigation in Los Angeles. It is now known that in addition to lining up witnesses, the investigators obtained from Radio Reports, Inc., a monitoring service, access to thousands of record disks of KMPC programs and sheets containing notes on those and other programs (R. 14514-27, 14840-47). Many of these they removed and retained (R. 14892-93), and the rest they tied up under a subpoena and a directive to the manager of Radio Reports not to make any of them available to station KMPC (R. 14518, 14530-33).

(g) Trusteeship Proposal.

On March 16, 1949, counsel for Mr. Richards requested a postponement of the hearing, submitting physicians' affidavits as to Mr. Richards' health and indicating that an application would be filed to transfer voting control of all stock owned by Mr. Richards in the three corporate licensees. The Commission granted the request on March 17, and on April 18, 1949, counsel for Mr. Richards submitted applications for consent to transfer of control of the corporate licensees pursuant to a trust agreement under which Mr. Richards would transfer his voting rights to three trustees—John A. Hannah, president of Michigan State College; Lawrence P. Fisher, vice-president, Fisher & Co., Inc.; and Harry J. Klingler, vice-president of General Motors and general manager of the Pontiac Division.

(h) Consolidated Orders for Transfer and Renewal Hearings.

On July 25, 1949, the Commission issued an order (Docket Nos. 9402, 9403, 9404) designating for hearing the three transfer applications upon three issues similar to those in the November 1948 order (Docket No. 9193) for an investigative hearing, plus additional issues directed to the proposed transfer of control. At the same time, the license of WGAR having expired on May 1, 1948 and having been extended temporarily since that date, the application for renewal of WGAR'S license, filed March 5, 1948, was designated for hearing (Docket No. 9405) on issues similar to those designated in the investigative order (Docket No. 9193) plus a new issue as to the accuracy of representations made in affidavits and pleadings submitted to the Commission. The investigative proceeding (No. 9193), the transfer

proceedings (Nos. 9402, 9403 and 9404) and the WGAR renewal (No. 9405) were consolidated.

On August 25, 1949, and August 30, 1949, applications for renewal of the licenses of KMPC and WJR were filed with the Commission. On September 28, 1949, the Commission designated these applications for hearing (Docket Nos. 9468 and 9469) together with the WGAR renewal application (Docket No. 9405) and the three transfer applications (Docket Nos. 9402, 9403, and 9404). The investigative proceeding (Docket No. 9193) was cancelled at the same time.

(i) Motion to Change Issues

On November 7, 1949, counsel for the Applicants filed a motion to change the issues in the order of July 25, 1949, with reference to the transfer applications by striking therefrom issues 1, 2, 3, 4, and 8, and to strike all issues from the order of September 28, 1949 on the renewal applications, or in the alternative to postpone consideration of the renewal applications pending determination of the issues raised solely by the transfer applications. The grounds for the motion were in general that the issues designated for the renewal applications assumed a power over programming, specifically newscasts, which the Commission does not possess, in view of the ban on censorship contained in Section 326 of the Communications Act and the First Amendment to the Constitution. It was further submitted that immediate consideration of the trusteeship proposal would obviate a hearing which would endanger Mr. Richards' health.

On January 11, 1950, the motion to change issues was denied, Commissioner Hyde dissenting and voting for a postponement of the hearing on the renewals, pending

hearing on the transfer applications. The Commission ordered the hearing to commence on March 13, 1950, at Los Angeles.

(j) Motion for Bill of Particulars, etc.

On February 21, 1950, the Applicants filed the following:

- (1) Petition for Conformance of Procedure to Section 9(b) of Administrative Procedure Act.

Section 9(b) provides that prior to the institution of agency proceedings for withdrawal, suspension, revocation or annulment of any license, facts or conduct warranting such action shall be called to the attention of the licensee and opportunity shall be accorded to demonstrate and achieve compliance with all lawful requirements. This petition therefore requested notice of any provision of statute or regulation alleged to have even violated, notice of facts supporting each alleged violation, and an opportunity to refute such alleged violations and to demonstrate compliance with all lawful requirements.

- (2) Motion for more Definite Statement of Matters of Fact and Law Asserted and for Bill of Particulars.

- (3) Motion for Ruling that Burden of Going Forward is on Commission.

- (4) Motion for Prehearing Conference.

On February 28, 1950, the Commission granted the motion for prehearing conference. On March 1, 1950, it denied the motion for bill of particulars and the petition for conformance of procedure.

(k) Prehearing Conference March 1, 1950.

At a prehearing conference held before the late Examiner J. Fred Johnson on March 1, 1950, Commission Counsel refused to give any particulars as to the case intended to be brought in the Los Angeles hearing starting March 13 (Prehearing record March 1, 1950, pp. 15-38). In lieu thereof, Commission Counsel stated that the Commission would proceed first and present all its evidence as to KMPC (id. at pp. 55-56), after which the Examiner indicated that the Applicants would be given a recess in order to prepare their rebuttal as to KMPC and their case in chief as to KMPC (id. at pp. 69-70).

(l) First Hearing.

The first hearing began on March 13, 1950, in Los Angeles. Commission Counsel presented 23 witnesses, all except one of them former employees of KMPC, who testified solely as to KMPC. On April 1, 1950, the Commission rested, and the hearing was recessed until September for the Applicants to prepare rebuttal testimony and their case in chief (first hearing, Vol. 16, pp. 2304-07).

(m) Death of Examiner and Order for New Hearing.

A short time after the recess in Los Angeles, Examiner Johnson died. On May 4, 1950, the Commission appointed a new Examiner and ordered the resumption of the Los Angeles hearing to start on June 5. The Applicants filed a motion requesting that the new Examiner be directed to hear the case de novo and that the previous testimony from March 13 through April 1 be stricken. The motion was granted on May 23, 1950.

(n) Prehearing conferences, June 4, 5 and 6, 1950.

At a prehearing conference on June 4 before the new Examiner in Los Angeles, Commission Counsel took the position that the March 1 prehearing conference had not been stricken and therefore that the Commission should continue to proceed first in the new hearing scheduled to start the next day (June 4, 1950, pp. 8-10). The Examiner ruled that the applicants should proceed first with respect to KMPC (id. at pp. 36-37). When the hearing was opened on June 5, word was received that the Commission had ordered a continuance pending Commission Counsel's appeal from the Examiner's ruling (June 5, 1950, pp. 3-4). On June 12, the Commission (Commissioner Hyde dissenting), relying on a statement by Commission Counsel which, as will be shown hereafter, was false, overruled the Examiner and ordered that Commission Counsel proceed first with the presentation of testimony. On that basis the hearing began on June 14.

(o) Second Hearing June 14 - October 19, 1950.

Commission Counsel, beginning on June 14, called Robert O. Reynolds, manager of KMPC (R. 70-71). He was on the stand for twenty days of examination by Commission Counsel and five days of cross-examination by counsel for KMPC. His testimony was carefully confined to KMPC. Even where Mr. Cottone introduced matter relating to WJR, he was required to show a connection with KMPC (R. 1011). After Reynolds, the Commission continued with the twenty-two ex-employees who had appeared at the first hearing. The affirmative case was completed by testimony of certain of the Applicants' present employees and of Frank E. Mullen, former president of KMPC, with the exception of reservation of the right to call Leo Fitzpatrick,

former manager of WJR, and Joseph Ream, vice-president of CBS, and to call John Baird of KMPC if not called by the Applicants (R. 8239).

On September 5, 1950, after three months of presentation of evidence by the Commission, the Applicants started presentation of their case (R. 8263). National, state and local leaders testified as to the reputation of Mr. Richards and KMPC. The heads of many advertising agencies testified to the absence of any complaints as to the KMPC newscasts and programs sponsored by their clients. Representatives of charitable and civic organizations vouched for the station's cooperation in giving them time for worthy causes. All religious denominations were represented by witnesses who vouched for the reputation of the station and its cooperation in religious programming. Thirty witnesses who had given newscasts or commentaries over KMPC testified in support of Mr. Richards and station KMPC, plus fourteen former non-news employees. A final witness for the Applicants testified to the fact that Commission Counsel had had recordings of newscasts which had not been disclosed and some of which had been authorized to be destroyed. Six rebuttal witnesses were presented by Commission Counsel on October 18.

On October 19, 1950, the Examiner announced that the KMPC phase of the testimony had been concluded by the Commission except for testimony by three witnesses as to KMPC who would be heard in Detroit—Mr. Fitzpatrick, former General Manager of WJR, Mr. Joseph Ream of CBS and an unidentified witness described by Commission Counsel as being in Korea, after which Applicants were to complete their KMPC case (R. 14915-6). The hearing was then recessed until November 9th at Detroit. It was later postponed until November 21st.

I

THE HEARING ON THE APPLICATION OF KMPC HAS BEEN SO PROTRACTED AND COSTLY, AND THE RECORD IS ALREADY SO VOLUMINOUS THAT THE PUBLIC INTEREST REQUIRES THAT THIS CASE BE DECIDED BEFORE CONTINUING WITH A BURDENSOME HEARING ON THE APPLICATIONS OF WJR AND WGAR.

The Commission's order of September 28, 1949, consolidating for hearing the six applications, three for renewal of licenses and three for transfer of control, has created a situation of chaos, confusion, burden and detriment to the public interest, which make it incumbent upon the Commission to re-examine and reconsider the issues involved.

The hearing has now reached the stage where the presentation of evidence with respect to the renewal application of KMPC is practically completed. The hearing adjourned on October 19, 1950 at Los Angeles, and is scheduled to resume on November 21st at Detroit. Although the Commission Counsel still has three witnesses who are to testify at Detroit with respect to KMPC and Applicants have additional evidence to present on KMPC, he agreed that any motions which the Applicants intend to make at the close of the KMPC case could be made during this recess. (Pre-Hearing Conference - November 1, 1950 - R. 14930-14936.)

The hearing commenced on June 14, 1950 and recessed on October 19, 1950, after 88 days of testimony. The record already has reached approximately 15,000 pages and there are over 700 exhibits, of which some are in multiple parts. For example, three exhibit numbers account for approximately 7,000 scripts of newscasts, varying from about 5 to

15 pages each. The station logs for a whole year bear a single exhibit number, but each day's log usually contains over 10 pages and several years are involved. Dozens of scripts of programs and speeches have been marked as exhibits. An estimate of over 100,000 pages of exhibits is very conservative. Before the KMPC license renewal phase is completed, there will be thousands of further exhibits as a result of the recent discovery by the Applicants, that there were hundreds of disks and note sheets made by Radio Reports, Inc. pertaining to KMPC newscasts in the possession of the Commission Counsel and hundreds more in the possession of Radio Reports, Inc.

The issues are such that the best evidence of what has been broadcast are the scripts themselves and such disks as have been preserved. At the request of the Commission Counsel, the available scripts of WJR and WGAR have been prepared for use in evidence at Detroit. There are approximately 19,000 scripts at WJR and approximately 13,000 at WGAR, consisting of several hundred thousand pages. It is not known how many thousands of pages of scripts of other programs may be introduced in evidence. Even if the Commission Counsel makes an effort hereafter to reduce the volume of the record, it is impossible for the Applicants to meet the charges against them without showing the total picture not only of their newscasts but also of their entire programming.

The expense to the Commission and to the Applicants is so great, that as a matter of fairness to the Applicants, and of consideration for the taxpayers who ultimately bear the cost to the Commission, it should give careful consideration to this petition and these motions.

Omitting the tremendous expense incurred by both sides during the two years between the initiation of the investigation in March, 1948, and the commencement of the first hearing in March, 1950, the expense of the hearings alone is unjustified, and an unreasonable burden to be imposed upon the Applicants and the taxpayers. Each side had a staff of four to five lawyers engaged in the hearing, in addition to numerous other persons devoting their time in connection with the hearing. The requests of Commission Counsel for station records required months of time of several station employees. Unless the Commission takes some step with respect to the issues, a great deal more time will be expended.

The difficulty for both sides in the case, and the reasons for some rulings of the Examiner and some actions of Commission Counsel, stem from the fact that the issues are so broad as to permit no reasonable limitations on the record. There are utterly no standards to determine such matters as the extent of the obligation of a radio station to retain scripts, the appropriate standards for determining slanting or non-slanting of news, the extent of the responsibilities of a station owner to supervise the programs of his station, to what extent he must give carte blanche to his newscasters, the boundaries over which he may not step in talking to his employees, and the extent to which an inquiry may be made into the character and personal beliefs of a stockholder.

The voluminous matter already in the record with respect to KMPC, plus the matter which Commission Counsel has stated will be presented with respect to KMPC at Detroit, have been fully explored and are sufficient in themselves to

provide a basis for determining the issues that are raised in a proceeding such as this.

Evidence as to WJR and WGAR will necessarily cover the same matters and involve the same issues as KMPC. Unless the issues of law—the proper method of procedure in such cases, the extent to which the evidence can or should be limited, the extent to which such an inquiry can be made without trespassing upon the constitutional guarantee of freedom of speech, the extent to which and the basis on which judgments can be made as to what is slanting and what is not, the question whether the performance of the station or the character of a principal stockholder is decisive in a renewal case—are determined at once, the continuation of the proceedings will be a repetition of all the difficulties encountered with the KMPC phase.

It is unfair that the Applicants are being made a guinea-pig for a test case on issues so broad and so sweeping that their determination affects the entire industry. As in the case of network regulation these issues should be considered *ab initio* by the full Commission in a hearing open to participation by the entire industry. Having begun a guinea-pig case, the Commission can now draw the line and relieve the Applicants of sustaining a burden which should be borne by every segment of the industry. Once the issues of procedure and substantive law have been clarified, by a final decision with respect to KMPC alone, evidence on the same issues with respect to WJR and WGAR can be taken with assurance of an orderly and effective proceeding.

If the Applicants' contentions as to the law are upheld, there will be nothing further on which to require a hearing, and the applications for renewal can be granted pursuant to Section 1.386 of the Commission's rules.

II

**THE ISSUES PRESENTED FOR DETERMINATION
ARE OF SUCH PUBLIC IMPORTANCE THAT THEY
SHOULD BE RECONSIDERED NOW BY THE ENTIRE
COMMISSION.**

The contention of Applicants with respect to the issues presented is as follows:

**A. The Commission Does Not Have the Power and
Authority to Control the Content of any Radio
Programs.**

Throughout the hearings, Commission Counsel has acted on the presumption that the Commission has power over the program content of radio stations. He has directed an inquiry into programs concerning news, politics, education, music, birthday salutes, reports by elected Government officials and representatives, and programs designed to promote Americanism—the defense of the Free Enterprise system and our form of Government.

One of the grounds upon which Commission Counsel asserts the power of the Commission to control programming is through the guise of inquiring whether programs involve “controversial issues.” On this theory he inquired into many programs such as: Victory F.O.B. (R. 997, 1010, 1221-1243), Mother’s Album (R. 1005, 1058), Motor City Melodies (R. 1008), In Our Opinion (R. 1008), Know Your America (R. 1008), Report from Congress (R. 969), and Today in History (R. 1567-A).

The first program listed—“Victory F.O.B.” was broadcast in 1944. It was an Americanism program and presented persons prominent in American life—in labor, education, business and government. Its purpose was to promote the basic freedoms guaranteed by the Constitution and the Bill

of Rights (R. 998). It was not designed to deal with controversial issues (R. 1010, 2436).

Commission Counsel took the position that this program did deal with controversial issues, simply because from his point of view the speakers were persons who were not supporters of the Administration. Without any reference to the subject matter of the speech, he argued that the mere appearance of James A. Farley on this program indicated that it was a controversial subject, because Farley opposed the fourth term for Roosevelt (R. 1103-9). He introduced in evidence (Commission Ex. 52) a letter in which Mr. Richards said Farley "advised the broadcasters out here to get in there and fight, not to be cowed by the FCC, as he says they have no right to revoke anyone's license for standing up for our country and its laws" (R. 1104). Commission Counsel also considered the appearance of then Senator Alben Barkley as improper as he was also opposing a fourth term (R. 1108).

Commission Counsel offered as Commission Exhibit 55, to support his contention that the F.O.B. program was improper, Mr. Richards' letter stating:

"Take the offensive as Free Enterprise and the American Way, and our Constitution have not failed. On the contrary, it and we have saved all the United Nations by our great ability under our free laws and labor to do this unheard of job. Also, it has allowed our eleven million men to go forth to crusade for all the downtrodden people of the world and they will all do themselves a lot of good to try and copy us and not destroy the best government and people in the world" (R. 1112).

Mr. Cottone offered the Fitzpatrick letters as "relevant to the issue of the use of the F.O.B. program for the advocacy of a particular political point of view and dealing with the program in a program which was designed to be an entertainment program" (R. 1195). Applicants took the position "that the defense of the American form of government, while it may be controversial, does not require that the opposite point of view be presented over our radio stations" (R. 1197).

A partial list of the speakers on Victory F.O.B. included:

Beardsley Ruml, Treasurer, R. H. Macy & Co. (R. 1293); Merle Thorpe, Editor of Nation's Business (R. 1290); Warren H. Atherton, former Commander, American Legion (R. 1292); F. C. Crawford, president of Thompson's Products, Inc. (R. 1294); Howard W. Jackson, former mayor of Baltimore (R. 1293); John J. Pelley, president American Ass'n of Railroads (R. 1293); Colby M. Chester, chairman, General Foods Corp. (R. 1295); Henry M. Wriston, president, Brown University (R. 1295); James A. Farley, former Postmaster-General (R. 1297); John W. Bricker, then Governor of Ohio (R. 1297); Dr. Edgar DeWitt Jones, pastor, Central Woodward Christian Church, Detroit (R. 1300); Henry J. Allen, Wichita Daily Beacon (R. 1301); Karl J. Hambro, Labor Committee, League of Nations (R. 1301); Earl Warren, Governor of California (R. 1301); Louis Bromfield, author (R. 1301); Walt Disney, motion picture producer (R. 1302); Guy M. Gillette, Senator from Iowa (R. 1302); William Green, president, A. F. of L. (R. 1302); W. A. Patterson, president, United Airlines (R. 1303); Fred M. Hopkins, Brig. Gen., U.S. Army Air Forces (R. 1304); William L. Hutchinson, president, Carpenters and

Joiners Union (R. 1304); Dr. Edmund Ezra Day, president, Cornell University (R. 1310); Eric Johnston, president, U.S. Chamber of Commerce (R. 1311); J. Edgar Hoover, Director, F.B.I. (R. 1311).

Commission Counsel stated the materiality of the Fitzpatrick letters would appear when the scripts of F.O.B. programs are offered in evidence, and would show how Mr. Richards' instructions were carried out. These programs were all carried over the Columbia Broadcasting System (R. 1198). If it was improper for Mr. Richards' stations to carry these programs, the Commission would have to mete out the same punishment to CBS as it does to WJR and KMPC.

During the direct examination of Reynolds, Commission Counsel attempted to show that programs on political matters were unbalanced, in that KMPC carried more speeches by Republicans than by Democrats, referring particularly to instances where more Dewey speeches were carried than Roosevelt or Truman. On examination of Reynolds by the Applicants, it was brought out that actually KMPC had carried every speech broadcast by Roosevelt or Truman over networks which reached Los Angeles. In the years 1940-1945 KMPC carried ninety-nine Roosevelt speeches, and in the years 1945-1950 carried sixty-three broadcasts by Truman (R. 2380). Then Commission Counsel contended that it is a Commission requirement that whenever a radio station broadcasts anything controversial (and he stated that almost every Presidential speech is to some extent controversial, except, for example, on Armistice Day), it is the obligation of the station to seek out and put on the air some opposition point of view (R. 7560-67).

Commission Counsel's theory on control of programming extends to the point of telling a station whose birthdays it must celebrate, if it decides to celebrate any. Commission

Counsel stated: "Mr. Richards was quite anxious that the birthdays of certain particular people be honored on KMPC. And I think we ought to have the record show what birthdays were honored" (R. 1569).

The program "Today in History" saluted various prominent Americans, such as General MacArthur, Dewey, Firestone and Rickenbacker. Commission Counsel criticized this program for failing to salute prominent Democratic persons (R. 1567, 3983-85).

He contended it was improper for KMPC to salute Governor Dewey on his birthday in 1947, without giving a salute to President Truman on his birthday that year (R. 1576-81). Commission Counsel did not bring out the fact that KMPC had saluted President Truman on his birthday in 1945 (R. 2132).

The control over programming for which Commission Counsel contends extends to telling a station what kind of music it shall play. In support of his contention that the license should not be renewed, Commission Counsel offered evidence that Mr. Richards did not want "bebop" music, or a song entitled "I Can't Get Started With You" played over KMPC (R. 2545, 2066-70).

While the Applicants strongly contend that the Commission has no authority over the content of programs, they were required to defend themselves against the charges, and disproved them completely. For purposes of this brief, just two of the allegations will be discussed.

Commission Counsel charged that Mr. Richards was prejudiced against Jews and Democrats, and that KMPC's programs reflected Mr. Richards' views. He introduced no evidence of alleged prejudice against Jews, except for the contention that the presentation of truthful news, received

over the wires or taken from newspapers, about criminals, black marketeers, and some communists or alleged left-wingers who happened to be Jews, was prejudicial to the Jewish people. He also contended that the Democratic party was treated unfairly both in newscasts and by unequal treatment in time given free to candidates.

The Applicants introduced uncontradicted evidence that KMPC had a reputation of fairness and impartiality toward Jews and Democrats in all its programs throughout the period covered by the Commission's evidence.

KMPC introduced evidence of many Jewish religious and charitable programs which it carried from 1947 to 1950. These included Passover programs, spot announcements of holy days, various charitable drives, and other programs. Joseph J. Cummins, publisher of the B'nai B'rith Messenger, with the largest circulation of any Jewish newspaper printed in English on the West Coast, testified that KMPC had a good reputation for fairness and impartiality in the treatment of Jews in its programs (R. 11858-11860, 11857). Although his paper received countless complaints regarding anti-semitism, it never received a complaint against KMPC or Mr. Richards before this investigation began in March 1948 (R. 11854-11856). Two Rabbis who appeared on KMPC in 1948 after the investigation began, testified that they had not heard any criticism about KMPC in its treatment of Jews on its programs (R. 11174, 11909-11911).

For a station accused of bias against the Democratic party and of having a principal stockholder whose personal opinions were unfavorable to the Democratic party, it is noteworthy that three leading Democrats of California came forward to testify on behalf of Mr. Richards and

station KMPC. U. S. Senator Sheridan Downey testified that since 1934 he has had many conversations on the subject of the attitude of the Los Angeles radio stations towards political groups and political causes (R. 13056-57). With respect to station KMPC's reputation for fairness and impartiality, particularly with respect to political matters, he stated "I think that the Richards' station has and had since I have known it a most excellent reputation for fairness and impartiality" (R. 13057).

On cross-examination, Downey testified that his own experience in political campaigns involved a great deal of trouble with certain stations in California but never with the Warner Brothers Station and never with Mr. Richards' station (R. 13061). He took the position that a radio station should be required, in the event some person is given time to speak on one side of a subject, to allow a speaker on the other side to have equal time; but even if a station violates that requirement, Senator Downey does not think it should have its license taken away but it should only be disciplined (R. 13080). He admitted having heard that Richards is a man of very strong feelings on certain matters such as the Roosevelt family, but he insisted that regardless of Mr. Richards' views, the station gave the Democrats fair and impartial treatment (R. 13078). "The test of the pudding is in the eating" (R. 13078). "No human mind can be impartial. Impartiality or partiality . . . is a relative term. . . ." (R. 13077) The only thing the Commission should ultimately take into consideration is the broadcasts themselves (R. 13081).

Rollin L. McNitt, chairman of the Los Angeles County Democratic Central Committee from July 1945 until August 1948 (R. 13093), testified he had appeared on KMPC in political broadcasts and also on the "Open Forum" program (R. 13094). He testified that the executive

board of the Los Angeles County Democratic Central Committee had considered the policy of all stations (R. 13100), and that during the three years he was chairman of the Executive Committee, there was never any criticism of KMPC (R. 13101), although the great friend of the Democratic Central Committee was KFVB. He stated that KMPC's reputation for fairness and impartiality on political matters is good (R. 13105).

David L. Foutz, Secretary of the Los Angeles Democratic Central Committee from January 1942 to August 1950 testified he handled public relations for the Central Committee during the 1944 campaign (R. 13522-23). Foutz testified to a series known as "Democracy Speaks" which was placed on KMPC, consisting of a series of playlets and discussions (R. 13524-25). He was not permitted to testify that other stations refused to carry the programs and KMPC alone accepted them and an offer of proof was made (R. 13526-29). If the Examiner had not excluded further reputation testimony, he would have testified that KMPC's reputation for fairness and impartiality on political matters was good (as to which an offer of proof was also made) (R. 13529).

The scripts of the 1944 Democratic programs to which Mr. Foutz referred were subsequently found and offered in evidence but not received (R. 14012-15). Among the speakers on those programs was Helen Gahagan Douglas, who, it has been charged, was supposed to be treated unfairly in newscasts.

Dozens of witnesses testified to the excellence of KMPC programs, and the great amount of time given free for public service programs, governmental, religious, educational and civic. In addition to these witnesses approximately 350 letters from such organizations thanking KMPC

for donating its time and facilities free of charge. National, state, county and city leaders testified to the good reputation of both KMPC and Mr. Richards. A partial list of the witnesses who appeared on behalf of KMPC follows:

MUNICIPAL, STATE AND FEDERAL OFFICIALS

Fletcher Bowron, Mayor, City of Los Angeles, for 12 years (R. 8263).

Eugene W. Biscailuz, Sheriff, Los Angeles County, for 18 years (R. 8423).

Goodwin J. Knight, Lt. Governor of California; formerly Judge of the Superior Court, Los Angeles County (R. 9352).

Arthur L. Erb, former City Judge, Councilman and Mayor of Beverly Hills (R. 10239).

William A. Smith, Chairman, Los Angeles County Board of Supervisors, member of board for 12 years; chairman for 4 years (R. 9724).

Vierling Kersey, Director of Junior Colleges, Los Angeles City School System; formerly superintendent, Los Angeles City Schools, for 11 years (R. 8513).

Edward S. Shattuck, Candidate, Attorney General of California (R. 10077); former General Counsel, National Selective Service System and Associate General Counsel, War Manpower Commission (R. 10078); formerly attached to General MacArthur's staff as Enemy Property Custodian for the Philippine Islands (R. 10078); formerly chairman, Republican State Central Committee (R. 10079).

Clinton Anderson, Chief of Police, City of Beverly Hills (R. 10377).

John Alderson, Chief of the Los Angeles Fire Department (R. 8583).

Earl R. Hunt, Manager, Hollywood Field Office, Social Security Administration (R. 8717).

Katherine K. Alexander, Supervisor of radio and press relations, Los Angeles office, California Department of Employment (R. 9121-22).

George Harshberger, formerly promotional director, War Finance Committee, Treasury Department, for Southern California (R. 9145-46).

David E. Janison, information director, Los Angeles City Health Department (R. 10379).

Joe Micciche, radio coordinator, County Board of Supervisors; formerly radio coordinator for City of Los Angeles (R. 11358).

L. C. Fitzgerald, information service representative for west coast area, Veterans Administration (R. 11510).

C. P. MacGregor, producer of radio shows, including program "Proudly We Hail" for U. S. Army and Air Force recruiting (R. 10234).

Col. James O. Brauer, U. S. Marines, Eleventh Marine Corps Reserve District, Los Angeles (R. 11727).

Ben Koepke, Area Rent Director, Office of Housing Expeditor (R. 12436).

Jack B. Tenney, State Senator representing Los Angeles County; for ten years chairman, California Legislative Committee on Un-American Activities (R. 12835-36).

J. Wyn Austin, City Councilman, City of Los Angeles (R. 12947).

REPRESENTATIVES OF CIVIC ORGANIZATIONS

Mrs. Leland Atherton Irish, Civic Leader, Jewish Auxiliary Home for the Aged; Federation of Jewish Welfare Organizations; president, Women's Division, Hollywood Chamber of Commerce (R. 12426-27).

Karl Wecker, General Manager, Hollywood Bowl (R. 9110).

George N. Craig, National Commander, American Legion (R. 13050).

Irving Markheim, service officer, Disabled American Veterans and Veterans of Foreign Wars (R. 9803).

Richard B. Borland, Commander, Los Angeles County Council, American Legion 1948-1949 (R. 12120).

Frank E. Benedict, formerly chairman, Ways and Means Committee, Los Angeles County Council, American Legion (R. 12133); formerly Commanding Officer, Military Training, U.C.L.A. and California Tech.; formerly Commanding Officer, Grand Central Air Terminal (R. 12134-35).

Harry Myers, promotional manager, Los Angeles County Council, American Legion (R. 11897).

Gene Mann, managing director, Greek Theatre, Griffith Park, City of Los Angeles (R. 12255).

Robert Irving Diller, public relations director, Los Angeles Community Chest (R. 12482).

James Cochrane Bishop, president, Bishop & Associates; formerly publicity director, Los Angeles Junior Chamber of Commerce (R. 12494).

Alice Taylor, manager, Women's Division, Greater Los Angeles Plans (R. 11505); manager, Southern California Symphony Association and Los Angeles Philharmonic (R. 11507).

Ray W. Smith, executive vice-president, Greater Los Angeles Plans, Inc. (R. 12720); formerly executive vice-president, Downtown Businessmen's Association; member, executive committee, Southern California Symphony Association; member, Board of Directors, Civic Light Opera Association; member of the board of directors, Guild Opera Company; member, executive committee, Convention and Tourist Bureau, Los Angeles Chamber of Commerce; member, board of directors, Volunteers of America; member, board of directors, Neighborhood Music Schools (R. 12721).

C. Tony Pereira, Commissioner, Department of Recreation and Parks; formerly member of board, Junior Chamber of Commerce (R. 11599).

Francis L. McDonough, Knights of Columbus, Pasadena, California (R. 11207).

Lucy G. Toberman, Los Angeles Junior League (chairman of television and radio, 1947-1948); founder and past president, Los Floristas Nursery; member, Assistance League of America; member of board, Los Angeles Chap-

ter, American Red Cross; chairman of public relations, Needlework Guild; past president, Junior Philharmonic Committee; vice-chairman, associate board, Hollywood Bowl; member, board of directors, Girl Scouts; vice-president, Ladies of the Press (R. 9906-09).

Mrs. Paul Handel, Junior League of Los Angeles, Girl Scouts, Social Service Auxiliary (R. 10786-87).

Harold A. Wagner, YMCA of Los Angeles (R. 10226).

Willrich Schroeder, manager-director, Helms Athletic Foundation (R. 10582).

Lloyd Docter, public relations director, Salvation Army (R. 10681).

Fred L. Flack, executive director, Boys Club of Hollywood (R. 9342).

Joe Crail, president, Coast Federal Savings & Loan Association (R. 9897); member, Bill of Rights Committee; Constitution Day Committee; Community Chest; Red Cross; Cancer Fund; Marine Reserve; YMCA; Sister Kenny Fund; Downtown Businessmen's Association; Los Angeles Chamber of Commerce (R. 9898).

Darsie L. Darsie, chief editorial writer, Los Angeles Herald-Express (R. 8474); organizer, Junior Army (R. 8476).

John B. Kingsley, owner, John B. Kingsley Company; president, Hollywood Chamber of Commerce; formerly Police Commissioner, city of Los Angeles; president, Hollywood Merchants Association; general chairman, Santa Claus Lane; vice-president, Hollywood Veterans Service Council; past president, Hollywood Concert Association; director, Hollywood Retailers; director, Hollywood Property Owners Association; director, Hollywood YMCA (R. 12702-03).

Fred Nason, president, Beverly Hills Transfer and Storage Company; partner, Nason-Rolapp Furniture Company; president, Beverly Hills Rotary Club; president, YMCA; district chairman, Boy Scouts; district chairman, Cub Scouts; vice-chairman, disaster committee, Red Cross; Community Chest; March of Dimes; formerly, vice-president, Beverly Hills Men's Club; trustee, Hollywood Con-

gregational Church; trustee, West Coast University; member of board, Daniel William Cooper Foundation; chairman, Los Angeles Round Table (R. 12488-12489).

ADVERTISING AGENCIES

Alan Donald Cameron, senior account executive, Lockwood-Shackelford; formerly with Atherton & Gresham and Arthur W. Stowe (R. 9746, 9755-56).

George W. Irwin, Irwin Company, Inc., formerly with Smith & Bull, and Robert F. Dennis; formerly Regional Publicity Director, Office of Price Administration (R. 9507-08).

Phil D. McHugh, formerly with Darwin H. Clark and Robert F. Dennis; former partner of George W. Irwin (R. 9613-16).

Van C. Newkirk, Broadcast Advertising; organizer of United Pacific Network (R. 10594).

Richard C. Francis, vice-president and Pacific Coast manager, Campbell-Ewald Company (R. 10259).

Walter F. Gardner, president, Allied Advertising Agencies (R. 9863-64).

Grace Glasser, president, Glasser-Gailey Advertising Agency (R. 10745).

Roderick A. Mays, Mays & Company (R. 10304).

Richard E. Messer, formerly general manager, Raymond R. Morgan; former executive vice-president, Robert F. Dennis, Inc. (R. 9201-02).

Dean L. Simmons, formerly with Mayers Company, now head of own firm and organizer of listener surveys (R. 9061-62).

Vincent Richard Smith, partner, Smith & Bull (formerly Smith, Bull & McCreery) (R. 10660).

Charles N. Stahl, Jr. (R. 10055).

Barton A. Stebbins, formerly administrative officer, Armed Forces Radio Service; formerly radio director, Office of Inter-American Affairs (R. 9696-97).

Howard Tullis, president, Tullis Company (R. 8901).

RELIGIOUS

Protestant:

Dr. James W. Fifield, First Congregational Church, Los Angeles (R. 11047); representative of Congregational Denominations, Federal Council of Churches of Christ in America (R. 11050).

Dr. Warner Muir, Wilshire Christian Church, Los Angeles (R. 11177).

Rev. John H. Engle, Central Heights Methodist Church, Hollywood; president, Hollywood Ministerial Association; member, Inter-faith Council (R. 11184).

Dr. James W. Bell, First Presbyterian Church, Los Angeles (R. 11247).

Catholic:

Father John Sheridan, St. Basil's Church (R. 11210).

Father Patrick J. Roche, Assistant Superintendent, Catholic Schools, Los Angeles (R. 11670).

Monsignor Anthony J. Brouwers, Director, Society of the Propagation of the Faith (R. 12261).

Father C. J. McCoy, Blessed Sacrament Church (R. 12437).

Jewish:

Rabbi William Kramer, Congregation Beth-El, San Pedro; formerly Assistant Rabbi, The Temple, Cleveland (R. 10945-46).

Rabbi Joseph Jasin, Chaplain, California State Institutions; Jewish Committee for Personal Service; member, Central Conference of American Rabbis; member, Southern California Board of Rabbis; secretary and treasurer, Liberal Rabbis Association of Southern California (R. 11172).

Rabbi Joel L. DeKoven, B'nai Zion Temple (R. 11909).

Rabbi Sidney I. Goldstein, formerly of Valley Jewish Community Center (R. 11925).

Rabbi I. S. Ravetch, Temple Sinai, Long Beach (R. 11928).

Rabbi Bert Woythaler, Temple Beth Zion (R. 11933).

Rabbi Leon Rosenberg, Westchester Jewish Congregation (R. 11937).

Rabbi Max J. Merritt, executive director, Los Angeles Chapter, American Jewish League against Communism (R. 11940).

George J. Meyer, United Synagogue of America, executive director of Southern California Region (R. 10977).

DEMOCRATS

Sheridan Downey, U.S. Senator, 1938-1950 (R. 13055).

Rollin L. McNitt, Former Chairman, Los Angeles County Democratic Central Committee; Dean, Southwestern School of Law, 1918-1940; past president, Board of City Planning Commissioners of Los Angeles (R. 13091-93).

David L. Foutz, Secretary, Los Angeles County Democratic Central Committee, 1942-1950 (R. 13522-23).

SPORTS FIELD

Hartly (Hunk) Anderson, Chicago Bears Football Coach (R. 9916).

Ty Cobb, Baseball (R. 10403).

Christy Walsh, Writer; former Director of Sports, New York World Fair (R. 10430-31).

Fred Haney, Manager, Hollywood Baseball Club (R. 10440).

Braven Dyer, Sports Columnist, Los Angeles Times (R. 10453).

Maurice Luxford, member, Board of Directors, Western Golf Association; member, Advisory Board, National Professional Golf Association; former member, Los Angeles Recreation and Park Commission, Coliseum Commission; general chairman, Los Angeles Heart Institute Drive (R. 12053-54).

William G. Lopez, Supervisor of Athletics, Los Angeles Senior High Schools (R. 11392).

MISCELLANEOUS

Clyde Wood, field representative, American Federation of Radio Artists (R. 10794).

Frank P. Dougherty, principal stockholder, Station KRKD; executive vice-president, Los Angeles Daily Journal; member, Board of Directors, Chamber of Commerce; former vice-president, California State Chamber of Commerce (R. 11270-73).

Capt. Edward V. Rickenbacker, president, Eastern Air Lines (R. 2422).

Telford Work, owner, City News Service, Los Angeles (R. 9049).

Joseph J. Cummins, publisher, B'nai B'rith Messenger; former publisher, Detroit Jewish Chronicle; first president, American Jewish Congress in California, one of original organizers of Anti-Defamation League (R. 11851-53).

Norman J. Rivkin, Director of Public Relations, National Conference of Christians and Jews (R. 10988).

Admiral Jesse B. Oldendorf, U.S.N. (Ret.); commanded Naval Forces in Battle of Surigao Straits; formerly, Commandant, Eleventh Naval District, and Commander, Western Sea Frontier (R. 9476-77).

William G. (Bill) Hay, Pioneer Radio Announcer; president (R. 12061-62).

Cecil B. deMille, Motion Picture Producer (R. 12310).

Chase E. Traweck, Firestone Tire and Rubber Company (R. 12442).

Henry M. Bateman, Stock Broker, president, Bateman-Eichler & Company (R. 12465).

Freeman Lusk, newspaper publisher; Supervisor of Information, Los Angeles City Board of Education (R. 10617).

Dorothy C. Forthingham, partner in charge of Los Angeles office, Facts Consolidated (market research and radio surveys) (R. 12908-09).

Paul H. Helms, president, Helms Bakeries; president and founder, Helms Foundation, Inc.; director, Los Angeles Branch, Twelfth District, Federal Reserve System; trustee, Claremont College; director, University of Religious Conferences; president, Board of Trustees, Westwood Methodist Church; director, Los Angeles Plans, Inc.; director, Cancer Research Bureau, University of Cali-

fornia at Los Angeles; trustee, Los Angeles Art Association; director, Los Angeles Chamber of Commerce (R. 10769-70).

B. The Commission is Prohibited by the Constitution and by Section 326 of the Communications Act of 1934, from Controlling or Censoring the Content of News Broadcasts.

The attempt by the Commission to base a refusal to renew the licenses of these stations upon its own judgment as to whether their newscasts were "slanted" is a violation of both the Communications Act and the Constitution. The Commission has no power to consider or determine whether any news broadcast is either biased or impartial, wholly factual or wholly editorial, or whether it either discriminates against or favors any political cause, group or candidate.

The Communications Act of 1934, as amended, expressly prohibits the Commission from inquiring into the contents of any programs not specifically referred to in the statute. Section 326 of the Act states:

"Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

Although no attempt will be made here to argue at length the legal principles involved, it may be justifiable to point out that this section does no more than make it clear that Congress had no intention of permitting any encroachment upon the provision of the First Amendment to the Federal Constitution, which is:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Supreme Court has stated that the Act gives the Commission no supervisory control of the programs, or policies of licensees. *F.C.C. v. Sanders Bros.*, 309 U.S. 470, 475.

C. The Contention of the Commission that It Does Have Power to Control the Content of Newscasts is Asserted for the First Time in this Case. If the Commission is to Establish Standards to Govern the Presentation of News on All Radio Stations, it Should be Done After Public Hearings Where All Viewpoints may be Presented, and not on the Hearing of a Renewal Application Where Only One Viewpoint is Represented.

The Commission has not established by rule or regulation any standards regarding news broadcasts or how particular political, social and economic viewpoints should be presented. This hearing has demonstrated that if the Commission desires to determine whether standards respecting such matters should be established, the only proper method is by means of a rulemaking proceeding pursuant to Section 4 of the Administrative Procedure Act. Whether such standards may be legally established, and, if so, whether as a matter of policy such standards should be promulgated, are questions of industry-wide application.

The importance of this issue to the broadcasting industry is attested to by the resolution of the National Association of Broadcasters of June 22, 1950. (Comm. Ex. 432-3) The NAB resolution stated in part:

"WHEREAS, the Federal Communications Commission has commenced certain proceedings involving

the licenses of three important broadcast stations in the United States (KMPC, Los Angeles; WGAR, Cleveland; and WJR, Detroit) and,

“WHEREAS, such action constitutes undue interferences with licensee’s responsibility to the public, and

“WHEREAS, it appears that both in these proceedings and others instituted in recent years the commission is attempting:

“(1) To exercise censorship over radio programs and to interfere with the right of free speech in violation of the First Amendment to the Constitution and of Section 326 of the Communications Act:

“(2) To violate fundamental precepts of due process of law and the procedure required by Congress in prosecuting licensees with whom it disagrees.

“NOW, THEREFORE, it is the sense of the Board of Directors of the National Association of Broadcasters that (1) such proceedings as those above mentioned are of vital concern to the public and to the broadcasting industry; (2) broadcasters should take all necessary and proper steps to inform themselves of the issues involved and defend themselves against such usurpations of power by the Commission by all appropriate methods, including bringing the same to the attention of the Congress and of the people; * * *

The importance of this issue to the public has been recognized editorially in newspapers and magazines. *The Washington Post* stated editorially on April 11, 1950 (Comm. Ex. 290) :

“SHADOW OF THE CENSOR

A hearing of great importance to the radio industry and the public has recessed in California. It involves charges of bias and news-slanting against George A.

Richards, the owner of KMPC in Los Angeles and two other powerful radio stations. * * * * *

If Mr. Richards should be put off the air for trying to slant the news against the persons and groups that are anathema to him, where would such a policy end? To be consistent the commission would then have to withdraw the licenses of stations slanting the news against other political figures and organizations. We do not believe that the commission has any standards that would be a safe guide in such a venture, and if it did the enforcement of such a policy would go seriously against the grain of our traditions.

Every decision as to what shall go on the air and how it shall be "played" is likely to be influenced by the broadcaster's or the newscaster's prejudices. The best radio stations and the best newspapers hold these prejudices in check, struggling for fair and unbiased presentation of the facts. But it is common knowledge that slanted newspapers flourish, presumably because the people wish to read them. Would it be feasible for the commission to put off the air a broadcaster catering to prejudices that were common with big metropolitan dailies in the same city? To be sure, the number of broadcasting channels is limited, but so are the opportunities for publication of a daily newspaper. We doubt that the FCC can apply stricter policies in the regulation of broadcasting than the press generally applies without taking upon itself an unmanageable problem of censorship. The public interest demands a wide range of freedom on the air as well as in the press. The danger of the FCC embarking upon a policy of censorship seems to us much greater than the occasional abuse of freedom by licensees whose prejudices color their judgment."

In the issue of May 27, 1950, the *Saturday Evening Post* stated editorially (Comm. Ex. 290) :

"WHO IS COMPETENT TO DECIDE WHICH NEWS IS 'SLANTED'?"

People who are on the alert for the beginnings of censorship in this country are taking a second squint at the proceedings brought by the Federal Communications Commission against Mr. G. A. Richards, who operates three radio stations: in Cleveland, Detroit and Los Angeles.

* * * * *

The Richards case sounds suspiciously like one of those 'alarm bells in the night' which free men fail to heed at their peril."

The necessity for a public hearing where all viewpoints might be presented is further indicated by statements made in Congress. On March 13, 1950 Senator Homer Ferguson read on the Senate floor an editorial in the March 4, 1950 issue of the *Saturday Evening Post* entitled "Must Propaganda Be the Monopoly of Our Leftists?" Senator Ferguson then stated (Comm. Ex. 290) :

"These are peculiar circumstances—on the one hand the report of the investigation of a licensee who was a supporter of Republican doctrines, and on the other hand the failure to investigate other radio licensees whose personal views show strong political bias in an opposite direction.

Let me make clear that I have no objection to fair rules being laid down to permit any licensee to operate his station in the public interest, or to permit the views of any organization to be fairly presented to the radio audience. I think the United States Senate should be interested in checking into the fairness of the Commission in applying its rules and into the question of possible bias in their application.

If radio-station owners of one particular leaning are being favored and those of opposite leaning are being

frowned upon, clearly then the Commission is embarking upon the dangerous course of political censorship."

On March 30, 1950 Senator Styles Bridges stated in Extension of Remarks in the Congressional Record (Comm. Ex. 290) :

"Every Member of the Senate is aware, however, that such distortion is affected by radio stations. I am of the opinion that much of the distortion in news reports that go out over the radio has been done in favor of the administration. This is only an opinion.

It is interesting that the Federal Communications Commission, at the request of James Roosevelt, has invoked seldom-used powers. The case should be considered on its merits. I hope the Senate committee will explore this matter.

I hope it will explore also the question of whether this operator is being singled out while other station operators are given complete freedom to support the party line of the administration in violation of the Communications Act.

The power to regulate can be distorted to become the power to censor. This must not be allowed to happen in the United States.

I want the Commission to enforce the Communications Act fairly and aggressively against any violator. It should make no difference whether a violation is committed by a member of the Democratic or Republican Party."

That the extent of the Commission's authority and the question of what policy should be adopted, can be properly considered only at a hearing where all the public may be heard, was forcibly demonstrated by Senator John W. Bricker in the Senate on July 12, 1950, when he said (Comm. Ex. 432-14) :

"I am convinced that the Congress never intended the Federal Communications Commission to penalize a radio station because of the personal political views of the owner, when his views are not reflected in the programing of the station. In my judgment the action of the Commission is an attempt to impose political censorship, which is abhorrent to every fundamental principle and feeling of the people of the United States.

"I suggest that basic constitutional questions are involved in these hearings. These questions were raised at the time of the discussion on the floor of the Senate of the reorganization plan for the Federal Communications Commission. By this threat of nonrenewal of licenses, the Federal Communications Commission is attempting to exercise a measure of political censorship and thought control over independent radio station owners whose personal views may not be everything the Commission desires. In my judgment the apparent administrative irresponsibility of the Federal Communications Commission indicates that Congress needs to take a careful look into its powers, with a view toward more carefully defining what the Commission may and may not do."

Many civic organizations, representing millions of Americans, have expressed their interest and concern in these proceedings. At the recent National Convention of the American Legion in Los Angeles, the National Commander, Erle Cocke, Jr., on October 12, 1950, in presenting a citation by the Legion Executive Committee commending Mr. Richards for the "outstanding" service of his stations, stated to him:

"We are familiar with your F.C.C. hearing and endorse your stand 100 percent." (App. Ex. 244)

On the same occasion Boniface Maille, National Commander of the Disabled American Veterans likewise supported Mr. Richards.

D. It is Impossible to Set Up any Standards by Which to Judge Whether Newscasts are Proper, Without Violating the Constitutional Privilege of Freedom of Speech.

The first issue in the Commission's order of September 28, 1949 (Docket Nos. 9405, 9468 and 9469, the renewal cases) is:

"Whether G. A. Richards has . . . issued instructions or directives to officers and employees of said licensees—

- (a) To present news broadcasts in a manner designed to give a biased or a one-sided presentation of the news."

Whether or not the Commission realized it at the start, the record now makes it clear that there is no standard whatsoever of what is the norm of proper presentation of the news from which deviations can be measured.

The testimony at Los Angeles has shown that there are certain standard sources of news. The A.P., U.P. and I.N.S. have wire services designed primarily for radio stations in addition to their regular and more extensive news services. In Los Angeles there is also a City News Service providing similar rapid coverage of local events. In Los Angeles as everywhere else, there are newspapers which in turn obtain news from the wire services, from their own reporters or from other reportorial sources. Radio stations can obtain information from their own personnel covering events as they occur or studying other sources.

Whatever is the source directly utilized in preparing a newscast, the testimony demonstrates that from the very beginning of the process of reporting, the opinions and bias, conscious and unconscious, of the reporter come into play. The Commission's witnesses had to concede this. Walter

Carle, former news editor of KMPC, a Commission witness claiming broad newspaper and radio experience (R. 2770-2771), testified that the original source of every item on the news tickers is the reporter who observed the event as it took place (R. 2832). The reporter at the scene makes notes which represent his judgment or opinion as to the highlights or important features of the proceeding (R. 2833). The editors to whom he delivers his material in turn put in what in their opinion are the important features in the reporter's copy (R. 2833). Every teletype news service differs from the others in its presentation of the news, in the stories it includes, the amount of space given to a story, as well as the wording (R. 2838). The teletype services deliver a "terrific volume" in a 24-hour operation (R. 2840), but from time to time give 5-minute or 15-minute round-ups (R. 2842). These roundups represent the opinion of the editor as to what would be useful and important for a radio station with only a limited time to look at the material (R. 2842-2843). Therefore, even if a radio station used only one service and consistently read as newscasts the round-ups and only the round-ups provided by that service, without changing a word, the news as given would reflect the opinions of all the individuals through whose hands it passed from the original reporter to the copy desk, to the editor, and thence to the wire.

The evidence shows that a station such as KMPC cannot build up or even hold an audience if it simply subscribes to one service and parrots simply what that service gives in its round-ups. Listeners would notice the consequent repetition and the similarity to news on other stations. Better radio stations therefore subscribe to two or more services. In the case of KMPC, there were never less than two and occasionally as many as four. To provide distinctive and compre-

hensive newscasting the news editors or announcers at the very least took material from two or more tickers, cut up and pasted together so that an item as broadcast on one story might contain elements from both the A.P. and the U.P. and items from one service might be eliminated entirely. In the correlating process the person so editing must use his judgment in including, omitting, adding connective phraseology, etc. Or he may do a complete rewriting job. It is conceded that the effort at KMPC throughout was to do as much rewriting as possible, and the Commission's witnesses approved this policy as proper news reporting. (R. 2848, 3905, 4642-3, 6094).

If radio stations abdicate to the wire services and eschew any rewriting or editing, does that mean that the news is unslanted? Clearly not, for the opinions and biases of the wire service personnel have come into play at every step. Since the three major services differ in the stories they cover, the relative importance they give stories and the language they use, it must be recognized that every person and organization reporting the news will do so differently. It cannot be demonstrated that the A.P. is unslanted any more than it can be demonstrated that an interpretation of the news different from that of the A.P. is slanted.

The problem thus becomes one of deciding what is slanted news and what is unslanted news. In the proceeding thus far there has been no standard on which to make such judgments.

The evidence in this record shows that in a sense, all news is slanted. Two reporters covering the same political meeting go away and with high purpose and entirely good conscience write reports from different points of view. Each has unconsciously slanted the news. It is for that reason that

the best judges of news are the readers of a newspaper, or listeners to a radio station. They are the only ones who should determine what is partial or impartial (R. 11282-11285). One radio station owner testified that in the 1948 campaign the I.N.S. wire slanted the news toward Dewey, and he instructed his newscasters to balance the news (R. 11289). What is fair and impartial to one person is not so to another (R. 11298-9).

Whether a person is unfair depends upon the viewpoint of the listener, or whoever is going to determine whether it is unfair (R. 11305-6). The question of whether news is "played up" or "played down" is not susceptible to any criterion, as what would be considered as "played up" to one person would be considered "played down" by another (R. 11318-11319). Since any individual who disagrees with a news report may consider it slanted, the only practical way is to let the entire public decide the matter (R. 11337).

Commission Counsel objected strenuously to evidence of what the public thought about KMPC newscasts. He would have the seven members of the Commission (or a majority of them) tell 150,000,000 Americans what news they shall be permitted to hear. This would be the end of freedom of speech (R. 11293). While the Examiner erroneously excluded evidence of many competent witnesses who were in a special position to express an opinion on the fairness of the newscasts, Applicants were permitted over the repeated opposition of Commission Counsel to introduce evidence of the reputation of KMPC in the community for fairness and impartiality in its newscasts.

Who are better qualified to judge the fairness and impartiality of news in their community than a U. S. Senator,

Lieutenant Governor, a State Senator, Sheriff of the County, Mayor of the city, members of the City Council, Superintendent of public schools, the advertising agencies which sponsored the newscasts, and many others who testified to the station's good reputation?

What evidence will the Commission consider in determining whether news is fair or unfair, and what weight will it give to the kinds of evidence available, and what special training or fitness does the Commission have in these matters?

Commission Counsel called as witnesses twenty newscasters—persons who prepared or delivered newscasts on KMPC. They testified in varying degrees to requests from Mr. Richards, either directly or indirectly, to treat certain items of news in a particular manner. The testimony of these Commission witnesses conflicted to a great degree, and none could be specific in their identification of items, but several did testify definitely that they were told to treat the news in a manner prejudicial to certain individuals and groups who happened to be Democrats or Jewish or labor. Several Commission witnesses testified they were not told to treat those subjects in a prejudicial manner. For example, some of the newscasters who testified for the Commission admitted they received no instructions as to treatment of individuals or issues as to which others insisted they did receive instructions. Starrels admitted he was not told to put in news unfavorable to Mrs. Roosevelt (R. 3587) although Roberts insisted he had told him to do so (R. 5969). Starrels testified he was not told to treat OPA news so as to reflect only the unfavorable and play down the favorable (R. 3587). Thor was not told by anyone how to treat news regarding Truman (R. 5066-5067), the Admin-

istration (R. 5068), Palestine (R. 5076), or Mrs. Roosevelt (R. 5077). There was likewise a conflict in the extent to which they were told to treat the news in a manner favorable to the Republicans and certain persons Mr. Richards admired, such as General MacArthur and J. Edgar Hoover. Most of the Commission witnesses testified that many times they ignored Mr. Richards' requests and treated those subjects as they saw fit (R. 2056, 2529, 2643, 2827, 2950, 3148-9, 3481, 3987, 4100, 4781, 6545).

Not a single one of the Commission witnesses testified that anything false was broadcast over KMPC. Those who were specifically questioned on the point conceded they knew of nothing false that was broadcast (Arnold, R. 3218; Carle, R. 2809; Dehner, R. 4894-4895; Desch, R. 2093; Hall, R. 2946, 2954; Henry, R. 3489; Horn, R. 6804-6805, 6699; Kenneally, R. 3234; Latimer, R. 2593; Lewin, R. 4737; Lyon, R. 5123; Patterson, R. 2550; Renier, R. 3992; Roberts, R. 6090-6091; Slattery, R. 2650; Starrels, R. 3499, 3738; Teas, R. 6620-6621; Thor, R. 5087).

In opposition to the Commission witnesses KMPC produced thirty witnesses who broadcast news over KMPC. Their testimony established that neither Mr. Richards nor anyone else at KMPC told them to treat the news in a biased or prejudiced manner. Their testimony alone completely refuted the charge that the news was slanted, since these witnesses broadcast during the same period of years covered by the Commission's witnesses. It definitely established that the only slanting possible was what existed in the minds of the Commission witnesses, whose personal political, social, and economic beliefs differed from those of Mr. Richards.

How can it be said that a station's newscasts were slanted one way, when some of the newscasters testify it was, and

others testify it was not. What standard or guide does such *oral* testimony give to the Examiner or to the Commission?

Does not the very fact that Commission Counsel chose for presentation certain particular subjects in the news reflect his own personal viewpoint? Is that not necessarily the basis upon which he determined what subjects were important? Was not the selection of subjects by Commission Counsel itself biased and prejudiced?

In any event, it is clear that if there is to be a determination as to whether the newscasts were fair or unfair, the newscasts themselves—the scripts or records of the broadcasts are *the best evidence*, and not oral testimony. The greatest weakness in Commission Counsel's case was his flight from the newscast script.

Until almost the end of the hearing at Los Angeles, the hearing was conducted in the belief that there was no physical evidence available of any KMPC newscasts prior to September 29, 1947. The Commission's witnesses, however, testified for the period from 1939 to February, 1948. Commission Counsel referred to only a very few of the approximately 1200 newscasts available for the period after September 29, 1947, and concentrated his attack on the period for which no newscasts were available, repeatedly asserting that KMPC may have destroyed or concealed newscast material.

However, on the last day of the hearing, Commission Counsel was forced to disclose that he had concealed evidence of newscasts before September 29, 1947, which he had subpoenaed from Radio Reports. This subject will be discussed below at Point IV i.

The problem which the Commission faces is that, if it assumes the right to determine whether KMPC's newscasts were fair and impartial, the Examiner and each of the Com-

missioners will have to read every one of them. And since this is not supposed to be a criminal case, to punish Mr. Richards for what he may have done prior to the discharge of Clete Roberts on February 6, 1948, the Commission must consider the operation of the station up to the time of the hearing. For the period from September 29, 1947 to March 1, 1950, (just prior to the first hearing) there are approximately 7,000 newscast scripts which have been identified as exhibits. These varied in broadcast time from 5 to 15 minutes. The recent discovery of disks of broadcasts prior to September 29, 1947 increases the burden.

An additional burden created by Commission Counsel was his insistence upon introducing evidence that the slanting of news was effected on occasion by the voice inflection of the announcer. Prior to the discovery of the disks, Applicants were deprived of any defense to that sort of testimony. However, now the only fair way to judge the issue, is for the Examiner and the Commission to listen to all the available disks, of which there are hundreds.

If the legal and policy reasons are not sufficient to convince the Commission of its error in permitting this issue to be the subject of a hearing, the practical impossibility of examining the evidence necessary to reach a conclusion of the facts should cause the Commission to reconsider. As has been pointed out above, if the Commission proceeds with the hearing on WJR and WGAR it will add nearly 32,000 newscasts to those it is already committed to read.

The absurdity of this procedure is apparent, and its futility has already been demonstrated by the fact that the public which has for years listened to these newscasts has concluded they are fair and impartial. Most of the witnesses on the list appearing in point I A so testified. There is no evidence to the contrary in the record.

E. The Commission has no Authority to Inquire into the Character and Private Political, Social or Economic Views of any Stockholder of a Radio Station Licensee as a Basis for Determining Whether to Grant a Renewal Application.

The Commission does not have the power or authority to inquire into the character or the private political, social or economic views of any licensee, or stockholder or officer of a licensee, or to consider whether any such views are or are not favored in any broadcast material transmitted. Nor does the Commission have the power to inquire into internal management affairs of the licensee, including such matters as instructions to employees. *F.C.C. v. Sanders Bros.*, 309 U.S. 470, 475; *National Broadcasting Co., v. U. S.*, 319 U.S. 190, 226.

The fifth subdivision of issue 1 of the order of September 28, 1949 involves the question whether Mr. Richards issued instructions "in any other manner to promote or further the private political, social and economic views and interests of Mr. G. A. Richards."

To determine whether such instructions were issued, Commission Counsel contends it is necessary to determine what are the "private political, social and economic views and interests of Mr. G. A. Richards," and it is necessary also to determine whether any expressions of those views were instructions or directives. Thus, the issues as interpreted by Commission Counsel, require first, an examination of Mr. Richards' private views, second, an examination of his expression of those views, and third, the extent to which those views were reflected in the operation of the station.

As a result, Mr. Richards' personal opinions and beliefs have been spread on the record, sometimes correctly, some-

times incorrectly. He is, it is clear, violently opposed to Communism and Communists. He favors the election of a Republican administration and is opposed to the Democratic Party as it has been conducted in recent years, its candidates, the New Deal and the Truman Administration. He admires certain individuals, particularly General Douglas MacArthur, Capt. Eddie Rickenbacker and J. Edgar Hoover. He has no admiration for others, particularly Henry Wallace and various members of the Roosevelt family. In some cases his political likes and dislikes may have been or are shared by most of the American people. In all cases they are shared by large numbers of Americans.

The assumption on which this proceeding has been conducted, is that these views are wrong, because, if they are right, the Commission could have no cause to complain of any alleged operation of the station in accordance therewith. What is involved, then, is the attempt to set up an arbiter of whether a person's views are wrong or right. Clearly, this raises a fundamental question as to the effect of the Constitutional guarantee of freedom of speech and the statutory prohibition of censorship in the Commission's authority to regulate the radio industry.

Concern regarding this assertion of power by the Commission was expressed by Senator Homer Ferguson in the Senate on May 10, 1950, when he stated (Comm. Ex. 432-24) :

"It may be asked : Is not Mr. Richards entitled to his private opinions, and is he not to be allowed to freely express those opinions?

Mr. President, I must confess that answers to these questions detrimental to Mr. Richards are not apparent to me on logical grounds. But it is certainly apparent that, with or without logic to base such action on, the Commission is attempting here to penalize Richards because of his privately expressed views, and because of

his private opinions. The fact that those opinions did not happen to coincide with those of the Commission and its staff, especially with respect to matters relating to national politics, is certainly to be regarded as significant. And the fact that the Commission's own evidence begins with events in 1940, when Mr. Richards departed from the Democratic fold and became critical of President Roosevelt, is more than significant."

The danger to our fundamental liberties of permitting an inquiry of this nature into the character of a radio station owner was expressed in the *Saturday Evening Post* editorial on May 27, 1950 as follows (Comm. Ex. 290) :

"Inasmuch as any attempt to control 'slanting' runs into the touchy issue of censorship, the charges appear to rest mainly on the clause in the communications law which gives the commission authority to pass on the 'character' of proprietors of radio stations.

Ordinary understanding of this requirement is that by 'character' is meant the degree of responsibility, moral, financial or other, which might be expected of a man who enjoys the limited monopoly which operation of a radio station confers. The notion that failure to appreciate James Roosevelt implies deficiency in 'character' would probably not have occurred to the framers of the communications law. Nor would it have occurred to them that discussions or orders behind the scenes in a broadcasting studio or the proprietor's private views about certain politicians would be seriously considered as grounds on which to challenge a man's fitness to operate a radio station—particularly when there seems to have been no complaint of the fairness or impartiality of the actual 'programming.' If a Government commission is to inquire into the opinions, prejudices or social connections of radio proprietors, we are nearing the point of no return as far as arbitrary censorship is concerned."

Applicants contend that in an application for renewal, unlike an initial application, the determining factor is not

the character of a stockholder, but the record of the station. The test of whether the license has been used in the public interest is what the station did—what was broadcast during the three-year period of the license. Character is only involved as a means of judging what kind of public service the station will give; and where there is a record of operation for a number of years, that is the best evidence of what can be expected in the future.

It is a matter of public importance that this issue be determined by the Commission at once. In this case it is particularly important because of the vicious attack upon Mr. Richards' character by Commission Counsel. In view of the outstanding reputation of Mr. Richards, as demonstrated in the record, this attack has caused many members of the public to be concerned whether Commission Counsel is prompted by an ulterior motive.

Christy Walsh, prominent sports writer, testified that "Mr. Richards is nationally known, so I have heard his reputation, his achievements, discussed" in more than thirty cities. (R. 10433) He said Mr. Richards had a national reputation for good moral character and generosity to charitable, educational, and civic organizations or institutions; his reputation for truth and veracity was of the best; and he had the very finest and highest reputation for patriotism (R. 10433-4).

Ty Cobb, famous baseball star, testified that Mr. Richards had a good reputation for moral character, patriotism, civic-mindedness and generosity to charities among leaders of this nation, including: Walter Hagen; Barney Oldfield; William E. Knudsen; Charles E. Wilson, president of General Motors; Harry Anderson; Walter Bemb; Ernest Breech, Ford Motor Company; Carl Breer, head of Chrysler Auto Research Department; M. L. Bricker, Ford Motor Company; Walter Briggs, Jr., Briggs Manufacturing Com-

pany, Detroit Tigers Baseball Team; John Bugas, Ford Motor Company; Harvey Campbell, executive vice-president, Detroit Board of Commerce; C. C. Carlton, president of Motor Wheel Corporation; Kenneth Carpenter; Jack Davis, sales manager, Ford Motor Company; Fred Diehl, purchasing agent, Ford Motor Company; Thomas J. Doyle; Harley Earl, General Motors; Henry Ewald, Campbell-Ewald Company; Senator Homer Ferguson; Harvey Firestone, Jr.; Charles Fisher; Edward Fisher; Lawrence Fisher; William Fisher; Edgar A. Guest; Charles Hughes, Secretary and Treasurer of Detroit Athletic Club; K. T. Keller, president of Chrysler; Harry F. Kelley, Governor of Michigan; Harry J. Klinger, Pontiac Motor Company; John Knight, Detroit Free Press; George Mason, president of Nash-Kelvinator; Fred Matthaeh, lawyer; Captain E. V. Rickenbacker, president of Eastern Air Lines; Dr. J. Milton Robb, prominent doctor in Detroit; Paul Seiler, Yellow Cab and Coach Company; Charles E. Sorenson, Willys-Overland Company; Gar Wood; Fred Zeder, Chrysler Motor Car Company; Father John Cavanaugh, president of Notre Dame; Frank Leahy, football coach at Notre Dame; John A. Hannah, president of Michigan State College; Kim Sigler, Governor of Michigan; George Halas, owner and coach of the Chicago Bears; Lowell Thomas, newscaster; Sid Luckman, football player; Bo McMillan, football coach; Francis X. Martel, president, Wayne County Federation of Labor. (R. 10407-10424)

Just a few of the tributes to Mr. Richards in the record of this case follow:

Captain Edward V. Rickenbacker, president, Eastern Airlines: "(In) everything he has ever attempted . . . he stood head and shoulders as a business man, executive, public servant, in the particular line of endeavor that he was associated with." (R. 2426)

"Well in my opinion, there isn't any better American. There isn't any better public servant, and never has been. . . . What you need is more of his type of Americanism and sincerity and honesty and confidence in this great land of ours, and less of the subversive type of human being that has assumed the attitude that the American way of life is no good and should be converted to the Communistic element." (R. 2426-27)

"Well, he has proven his character in many ways. He has served every type of agency, every type of religion. He has served every type of civic organization. He has friends in all walks of life, regardless of color or creed. He has been, in my opinion, a real contributor, because of that moral character, to the welfare of this land and in maintaining, helping to maintain, the American way of life, which we have lost so much of during the last couple of decades." (R. 2429)

"He has been given, or his station has been given, practically every award that is available from the American Legion and our different service groups throughout this land that can be had, which are indication of his service in my opinion. He has served every faith, Catholic, Jew and Protestant alike, without any discrimination. He has served the Negro as well as the White. I have seen him go out of his way to be of service to the underprivileged, particularly orphanages and the unfortunates." (R. 2430)

Father John Cavanaugh, president Notre Dame University: "Among the millions of friends and admirers of a great American and a great instrument for good, I am very proud, tonight, to be able to raise the voice of the University of Notre Dame and my own voice in congratulating Mr. Richards and WJR on the wonderful accomplishments they

can be proud of for Americanism in this country, and I think we Americans can draw from them this lesson that what is worth enjoying is worth not only living for but living for morally." (App. Ex. 62, R. 2433, 10970-1)

Fred Nason, Civic Leader, president, Beverly Hills Transfer and Storage Company: "Whenever charitable organizations get together, always Mr. Richards' name is brought up . . . I don't know that he has ever turned any of our organizations down." (R. 12490)

Henry M. Bateman, president, Bateman-Eichler Company: "He is a very patriotic individual who loves his country." (R. 12470)

Cecil B. de Mille, Motion Picture Producer: "He is a very fair man from what I have seen of him. He is a very strong man, he is a courageous man . . ." (R. 12320)

Jack B. Tenney, Senator, California Legislature: "... Mr. Richards has an outstanding reputation for fairness and—well—he has an excellent reputation in all respects." (R. 12854)

Harry Myers, Los Angeles County Council, American Legion: "Mr. Richards' reputation for patriotism is very high, exceptionally high. I only wish we had more people in America like him in that respect." (R. 11903)

Joseph J. Cummins, Publisher, B'nai B'rith Messenger: "Now, if you wish to elicit from me what I think of Dick Richards as a radio station publisher, so to speak, I have my opinion, frankly, that I think he was one of the best in the United States." (R. 11866)

Reverend James W. Fifield, Jr., minister, First Congregational Church, Los Angeles: Mr. Richards' reputation for fairness and impartiality in the treatment of racial and

religious groups is "entirely and unequivocally fair, and consistently so," (R. 11072) "... I think he has a very deep sense of dedication of himself and his facilities and everything to the perpetuation of our American way of life and Christian tradition." (R. 11078)

Paul H. Helms, president, Helms Bakeries, Civic Leader: "I personally feel that he is a very patriotic citizen." (R. 10772)

Freeman Lusk, supervisor of information, Los Angeles City Board of Education: "He is a great patriot." (R. 10633)

Hartly William (Hunk) Anderson, line coach, Chicago Bears: "I know he is a great American citizen. I know that he has done a great deal of things for the youth of America." (R. 9935)

Jesse B. Oldendorf, Admiral, U.S.N. (Ret.): Mr. Richards has an "intense patriotism and love for his country," he has "a reputation of being a great fighter and perfectly fearless," and is considered to be "most generous with regard to his contributions to the various charities and to handicapped persons." (R. 9488, 9491)

Fletcher Bowron, Mayor of Los Angeles: "I regard Mr. Richards from my own knowledge as being a very patriotic citizen." (R. 8290)

F. In Determining Whether the Operation of a Radio Station Justifies Renewal of a License, Inquiry should be Limited to the Period Since the Last Renewal was Granted.

Applicants contend that the Commission has no right to go back of the date of the prior renewal of a license in

considering whether the present application for renewal should be granted. The prior renewals are a decision by the Commission that the operation of the stations up to that time had been proper and that a renewal was in the public interest. There had been no complaints of any kind with respect to the operations of the station prior to the last renewals. Applicants' objection to considering evidence relating to the period prior to the last renewal of KMPC's license on November 1, 1946, was overruled, with the result that Commission Counsel was permitted to go back to the date of acquisition of the station by Mr. Richards in 1937 (R. 1317-21). This meant an examination of thirteen years of operations of that station. It also will mean the examination of twenty years of operations of WGAR and twenty-three years of operation of WJR.

The bias of Commission Counsel has caused him to treat this hearing like a criminal proceeding, rather than an effort to determine whether this station has operated in the public interest in the past, and gives evidence that it will do so in the future. He treats the date of the filing of the complaint by the Radio News Club, February 28, 1948, and the date of the Order of investigation by the Commission, March 19, 1948, as the cut-off dates. Evidence of the operation of the station since March 1948 in a manner which he concedes is contrary to the alleged unfair and prejudicial manner charged, he ignores and belittles (R. 1941, 2047). Commission Counsel's failure to show that KMPC was unfair to Jews, Democrats, or any racial, religious or political group after March 1948, a period of over two and a half years alone requires that the renewal application be granted.

III

THE EVIDENCE ALREADY PRESENTED IS SUFFICIENT TO DETERMINE THE ISSUES INVOLVED, EVEN THOUGH THE APPLICANTS WERE PREVENTED FROM PRESENTING ALL OF THE EVIDENCE THEY DESIRED.

Applicants contend that there is sufficient evidence in the record to require a determination of the issues in their favor. Although much evidence offered by Applicants was erroneously excluded, the evidence in the record shows irrefutably that the Commission must grant the applications. In the first place, a careful consideration of the issues will undoubtedly cause the Commission to conclude that there is no authority to refuse a renewal on the grounds alleged by Commission Counsel. In the second place, even if the Commission concludes it has authority, the record to date does not support the charges which have been made.

A. The Procedure Followed At the Hearing Permits a Consideration of These Issues at the End of the KMPC Phase of the Consolidated Hearing.

Although there are six applications consolidated for hearing, each application is legally separate and independent and must be decided on its own merits. The consolidation served to permit evidence applicable to the issue of Mr. Richards' character and qualifications to be considered with respect to all of the applications. Nevertheless, the consideration of the programming of each station is entirely separate for each, and the hearing has been conducted on that basis. This fact has been recognized both by Examiner Cunningham and Commission Counsel.

(a) First prehearing conference—March 1, 1950.

At the first prehearing conference before Examiner Johnson, counsel for the Applicants for the first of many times

pointed out that the proceeding in Los Angeles should be with reference to KMPC and be considered a separate proceeding (March 1, 1950, pp. 45-46). At two points Mr. Cottone agreed. Mr. Fulton stated his position as follows (id. at pp. 51-52) :

"I had hoped that it would be possible to proceed in an orderly manner with respect to each of the stations separately. Now I am willing so far as the stipulation is concerned to consider stipulating that in the Detroit hearing, when you get to the Detroit hearing, you be able to present at the time of the beginning of the Detroit hearing against WJR such evidence as you designate from the Los Angeles hearing, if it had any bearing on Detroit, and to the extent that it was relevant, that it be accepted in the Detroit hearing, without being repeated and it be considered, but I do think that the KMPC hearing and the WJR hearing are two entirely separate and distinct matters."

Mr. Cottone's reply was (id. at p. 52) :

"Mr. Cottone: I would agree to that, Mr. Examiner, to the extent that we are talking about the actual operations of the station.

"Now I think that any evidence that goes to the issues that we have specified under A which are directly related to Mr. Richards' qualifications to control the operations of these stations, any evidence with respect to that issue, it is immaterial whether that evidence is evidence of instructions given to an official in WJR or WGAR."

Mr. Cottone later affirmed his agreement that the Los Angeles case would be finished and completed before proceeding with WJR (id. at pp. 55-56) :

"Mr. Cottone: Did you hear what Mr. Ford said? Let me repeat it. I just assume that what we would be doing by that procedure would be for us to confine

the testimony of the witnesses, whether it be in relation of actual operations or in relation to instructions, to matters that relate to KMPC, in other words, either the instructions as to KMPC or operations as to KMPC.

"We will proceed to present our testimony with respect to those matters, and complete our presentation with respect to those matters as to KMPC, and then you will proceed with your presentation with respect to KMPC.

"We will do likewise with respect to Detroit. We will proceed with respect to any matters relating to instructions or operations as to WJR, and then you will follow and make your presentation, and similarly with respect to Cleveland."

(b) First hearing March 13—April 1, 1950.

Pursuant to such procedures as had been established at the March 1 prehearing conference, Commission Counsel introduced testimony of 23 witnesses, all except one former KMPC employees. At the end, it was clear that the government had rested.

"The Presiding Officer: Does that complete the government's case in chief?

"Mr. Ford: I have no more witnesses to call, your Honor." (First hearing, R. 2289)

"Mr. Ford: As I understand, in accordance with the prehearing conference, I am finishing with the Los Angeles phase only." (First hearing, R. 2297)

"The Presiding officer: Now gentlemen, we come to the matter of adjourning this phase of the case until some future date, at which time the applicants will be given full opportunity to put on their defense to what has been produced here and also their case in chief." (First hearing, R. 2304)

(c) Prehearing Conferences June 4, 5 and 6, 1950.

At the prehearing conference held in Los Angeles on June 4, 1950, before the new Examiner on the eve of the

beginning of a new hearing in accordance with the Commission's order of May 4, 1950, Commission Counsel insisted that he should be permitted to proceed first with the presentation of evidence as to KMPC, as was done at the first hearing. He insisted that the ruling and record of prehearing conference of March 1, 1950, before Examiner Johnson, had not been stricken but remained in full force and effect. In addition to emphasizing that the March 1 decisions as to the burden of proceeding remained effective, Mr. Cottone clearly had in mind the three-phase aspect of the proceeding previously agreed upon. Referring to the March 1 hearing, he said (June 4, 1950, vol. 1, p. 7) :

"It was further agreed, at Mr. Fulton's request, that the hearing would be in three phases, Los Angeles, Detroit and Cleveland and we (Commission Counsel) would proceed first in each place."

Mr. Fulton, in arguing for his right to proceed first, emphasized that "these are three separate stations" and that it was understood that after the adjournment of the first hearing, the Commission had no further testimony to put in on KMPC, and "in fact, the term 'rest,' a regular court term of resting, had been applied . . ." (June 4, 1950, vol. 1, p. 19) Mr. Cottone, insisting that the March 1 procedure be adhered to, emphasized the need for an "orderly record." (id. at p. 23) Both sides implied that KMPC was a separate and distinct matter.

At the prehearing conference of June 5, 1950, it was revealed that the Commission had intervened to delay the hearing pending consideration of Commission Counsel's appeal from the Examiner's ruling that the Applicants should proceed first with respect to KMPC. In the appeal Commission Counsel emphasized (p. 9) that there were to be three separate phases of the case, applicable to the three separate stations, and that no evidence had been introduced

in March "concerning the Detroit or Cleveland aspects of the case of the operations of Stations WJR and WGAR."

At a further prehearing conference on June 6, 1950, Mr. Cottone conceded that at the March 1 conference there was agreement that there be "separate hearings" at Detroit and Cleveland. (June 6, 1950, vol. 1. p. 35) The Examiner, while indicating a plan to take all testimony in Los Angeles, indicated that each case would be separately considered within a consolidated proceeding, in stating (*id.* at pp. 35-36) that his plan was "to go forward and complete KMPC and undertake and complete WJR and undertake and complete WGAR before returning to Washington." Upon Applicants' counsel's motion for a ruling that there be a recess after completion of the KMPC testimony, the Examiner stated (*id.* at p. 41) :

"I am not prepared, Mr. Burns, to rule on your motion for adjournment or recess upon the completion of the testimony on KMPC at this time. I would like to hear the motion again *after the KMPC case has been completed*. . . . we will be prepared to go on with the hearing of WJR and WGAR at the conclusion of this phase of the case."

(d) During Course of Hearing.

During the course of examining Mr. Reynolds, the manager of KMPC, Mr. Cottone requested him to produce a copy of a 1944 booklet containing the scripts of the program Victory FOB for 1944, a WJR program. (R. 1011) Upon Mr. Burns' insistence that any search would be confined to KMPC, Mr. Cottone emphasized that the material was relevant because the program was also carried on KMPC. In permitting the inquiry, the Examiner stated (*ibid.*) :

"I assume that for convenience we are taking testimony here in Los Angeles on KMPC first. I think that booklet might be relevant to the KMPC inquiry. . . ."

When Applicants' counsel presented Dr. James M. Robb as a character witness, Commission Counsel objected to testimony as to Mr. Richards' reputation in the Detroit area. (R. 1741-43)

The first general consideration of future procedure occurred on August 9, 1950. (R. 5673-5702) Mr. Cottone announced that "in the interest of attempting to curtail the bringing of witnesses . . . who might conveniently testify more appropriately at some other place, such as Detroit or Washington, we would be agreeable to just putting on for the remainder of our direct case in Los Angeles only those witnesses who are conveniently in this area . . ." (R. 5674) Mr. Fulton stated he had been informed by Mr. Cottone that a Mr. Fitzpatrick of Detroit would be called for questions solely with respect to KMPC or Mr. Richards' character as a licensee for renewal of his KMPC license, but whether that were done in Detroit or Los Angeles, there would be objection to going into anything other than that. (R. 5677) Mr. Cottone stated he intended to call Mr. Fitzpatrick, former manager of WJR, and Mr. Joseph Ream of CBS, to Los Angeles to testify as to KMPC (R. 5680), and when Mr. Fulton stated he was offering, to avoid expense and inconvenience, to take their testimony in Detroit limited only to KMPC matters (R. 5683), the Examiner stated:

"I am inclined to agree with that Mr. Fulton, if, first of all, it is determined we must take some testimony in Detroit. If we cannot possibly finish in Los Angeles all three stations, and must go to Detroit for some testimony, then I think it would be desirable, Mr. Cottone, that we take Mr. Fitzpatrick's testimony with reference to KMPC, and Mr. Ream likewise, in Detroit, rather than bring them out to the Coast." (R. 5683)

Mr. Fulton then made it clear that the KMPC case should be considered separately and that Commission Counsel should proceed with that case until it is finished and they

have rested. (R. 5684-5685) When Mr. Fulton quoted from the March 1 prehearing conference where Mr. Cottone stated Commission Counsel would proceed first with KMPC and complete its presentation on KMPC, and then the Applicants would proceed with their presentation on KMPC, following which WJR would be taken up (R. 5688-5690), Mr. Cottone stated (R. 5692) :

"Mr. Examiner, I would like to state for the record here that I am in 100 per-cent agreement with the procedure that I stated that Mr. Fulton read there . . . But insofar as I am concerned, we are perfectly willing to put on all of our testimony in respect of KMPC."

He emphasized that the reason for calling Mr. Fitzpatrick was to testify about a program carried on KMPC in order to comply with the understanding that "we will complete everything that we have with respect to KMPC." (R. 5693) The Examiner ruled that "while the government or Commission may rest its case in its entirety here, it may do so with the understanding that the testimony of Ream and Fitzpatrick will be taken in Detroit." (R. 5694) The effect of the ruling was that Commission Counsel was not required to take the testimony of Ream and Fitzpatrick on KMPC in Los Angeles before the Applicants should begin to put on their case in Los Angeles, but the implication was clear that the completion of any testimony relating to KMPC should be the first order of business in any Detroit hearing. (R. 5701-5702)

On August 30, 1950, upon the completion of the examination of KMPC's auditor, Commission Counsel conceded he had completed his direct case with respect to KMPC except for certain designated witnesses (R. 8239) :

"The Presiding Officer: All right. Now, Mr. Cottone, I take it you rest with reference to KMPC, with the

exception of Mr. Fitzpatrick and Mr. Ream, and as I recall it, Mr. Clete Roberts was not finally excused."

"Mr. Cottone: He was to be called back to identify certain of his commentaries on KMPC, that is true. That is correct, with this qualification, Mr. Examiner: We have completed the testimony on our direct case to the extent that we have been enabled to do so. We have taken the position here that Mr. Richards is part of our direct case. His appearance was not required. We reserve the right to pursue such remedies as may be available to us with respect to Mr. Richards' appearance and we, of course, insist upon that as a right that comes to us as part of our direct case."

At the prehearing conference on the trusteeship applications on September 19, 1950 (R. vol. 66), the Examiner tentatively ruled that the transfer cases would be taken up first at Detroit (vol. 66, pp. 26, 27, 29) Mr. Fulton made it clear that whether the trusteeship issues were considered before or afterwards, the KMPC renewal phase should be completed (vol. 66, p. 6), but that it was preferable to take up the trusteeship only after the completion of the KMPC renewal phase (vol. 66, pp. 19, 24, 26 and 27). Neither the Examiner nor Mr. Cottone even suggested that with respect to the three renewal matters aside from the trusteeship matter, the KMPC phase should not be completed before going into WJR and WGAR matters.

When Applicants' counsel called as a witness an employee of the Detroit station, Mr. Cottone objected to any testimony as to the programming of that station (R. 10874), and Mr. Burns made it clear that the only purpose of calling such witnesses was to rebut the charge of anti-semitism against Mr. Richards personally. (R. 10874-10875) When a former resident of Cleveland now living in Los Angeles testified, Mr. Cottone objected strenuously to any testimony as to station WGAR as a "complete traversity (sic) on the

whole purposes for which we have been holding a hearing out here." (R. 10946) The Examiner agreed, stating that "we are breaking this down into three phases, or two at least" (R. 10948) Mr. Cottone continued to object to any testimony as to WGAR. (R. 10953) In the case of a subsequent witness from Detroit, Mr. Cottone said he would object if his testimony related "to the Detroit phases of this hearing" (R. 11214), and only relented when it was made clear that the testimony related solely to Mr. Richards' character. (R. 11216)

On October 3, 1950, in a discussion of Commission Counsel's request for access to the WJR and WGAR scripts, Mr. Cottone in refusing to give any particulars as to his contemplated attack on the other two stations, clearly indicated his own conception of those stations as being separate and distinct matters. (R. 12041-12046)

In cross-examination of a witness (Monsignor Brouwers) who had not testified as to Mr. Richards as an individual but only as to KMPC's handling of religious matters, Mr. Cottone was required by the Examiner to limit his questions to the "Los Angeles phase." (R. 12288) When the Examiner subsequently refused to allow Applicants' counsel to put on further witnesses as to KMPC's reputation (R. 13130), he emphasized that this applied only to the "Los Angeles phase" and "does not refer, of course, to the reputation testimony you may wish to introduce with reference to Detroit and Cleveland later." (R. 13138)

As the hearing in Los Angeles drew to a close, Mr. Cottone reminded the Examiner of the plan to call Ream and Fitzpatrick in Detroit, plus one other rebuttal witness, specifically pointing out that the record would not "even be closed as to the KMPC part when we finish here on Thursday night," and the Examiner again recognized that these witnesses were to be "with reference to the KMPC phase

of the hearing . . . this last phase of the case." (R. 14109)

In closing the hearing in Los Angeles on October 19, 1950, the Examiner said (R. 14915-14916) :

" . . . let the record show, therefore, that we have as of this moment concluded the testimony of the witnesses in Los Angeles, and with reference to the Los Angeles phase of the case, except with reference to that testimony which will be taken in Detroit concerning KMPC. I think that is clear."

B. There is Sufficient Evidence in the Record to Determine Whether Standards to Govern Newscasts Should be Established.

If the Commission is determined to insist upon an inquiry into the content of newscasts on radio stations the issue should be faced now, before further expensive and protracted proceedings are held. If the issue is to be decided on a record of facts, the voluminous record on KMPC is sufficient. The record shows the newscasts that were delivered and the sources of news. It shows the mechanical difficulties of investigating what news actually was broadcast. It shows the substantive difficulties of judging whether that news was right or wrong, good or bad, fair or unfair. It presents, with no need for elaboration, the material from which the scope of the Commission's authority can be determined.

The record shows: (1) The testimony of many newscasters who testified that they presented the news in a fair and impartial manner. (2) The testimony of the advertising agents who sponsored the newscasts that the station had a reputation for fairness and impartiality. (3) Listeners to the station testified to this reputation for fairness and impartiality. (4) Jews testified that KMPC had a reputation for fairness in its news toward Jews. (5) Leading Democrats and other persons testified that the news was presented in a fair manner with respect to Democrats.

IV

COMMISSION COUNSEL'S ATTITUDE AND CONDUCT HAVE EXHIBITED A BIAS AND PREJUDICE WHICH HAVE PREVENTED A FAIR HEARING FOR THE APPLICANTS, AND HAVE INDUCED ERRONEOUS RULINGS WHICH CANNOT BE CORRECTED.

- (a) *Commission Counsel's assumption of the role of prosecutor in a hearing in which the Commission has the duty to bring out all relevant evidence.*

From the very beginning counsel for the Commission exhibited the vindictive attitude of a biased prosecutor intent not on eliciting all the facts, but on presenting a one-sided case, showing only the evidence unfavorable to Mr. Richards and his stations, and attempting to exclude any evidence favorable to Mr. Richards or his stations.

- (1) Commission Counsel refused at the outset and refused throughout to give the Applicants any particulars as to the charges or the documents he intended to rely upon. (Prehearing conference, March 1, 1950, pp. 15-38)
- (2) Commission Counsel refused to reveal to the Applicants even the statements that were obtained from present and past employees of KMPC during the course of the investigation (R. 51-52, 3361), and yielded these statements only when he no longer could allege any justification for withholding them (R. 2074-2075; 8860-8861; 13228-13230). This tactic went so far that shortly before witnesses hostile to Mr. Richards and KMPC were brought to the stand, at the hearing in March 1950, the Commission staff, in what was obviously an effort to prevent the Applicants from knowing what was contained in statements obtained in April 1948, asked the witnesses to surrender their own copies (First hearing, R. 1056, 1595); and

Commission Counsel refused to produce those sworn statements even where the witnesses themselves had no objection (*id.* at 1265, 1535, 1596, 1796).

- (3) Commission Counsel carefully avoided presenting any testimony of ex-employees who were known to him to be ready to refute the charges of those whom Commission Counsel elected to call. (R. 8828, 8844; 10360; 12160)
- (4) Commission Counsel refused to enter into any stipulation whatsoever. (March 1, 1950, p. 38-46, June 4, 1950, pp. 20, 41-43)
- (5) Commission Counsel made every conceivable effort to exclude any testimony favorable to the station. This went so far as to apply to any evidence as to the general programming of KMPC in the public interest. (R. 1807, 8272-8274)
- (6) Commission Counsel objected to any testimony as to the reputation and public acceptance of KMPC. (R. 8509, 8915-8918, 9183, 9560), and such testimony was arbitrarily limited as a result. (R. 13129, 13136)
- (7) Time after time, evidence which Applicants' counsel was permitted to introduce was attacked as manufactured. (R. 2047, 1940, 6433, 6469, 6455, 10593, 10917, 11096, 11008, 14324)
 - (b) *Unfair method of investigation and obtaining statements*

The investigation by the Commission staff was solely to find evidence with which to attack Mr. Richards and the stations, and no effort was made to ascertain the complete facts. The Commission investigators obtained signed statements from prospective witnesses by misinforming them that the investigators could subpoena them if they did not give signed statements voluntarily. They further induced persons to sign statements by assuring them the statements

would be confidential and never publicly used. (R. 8875, 10367-10369, 12160, 13226)

Their manner of questioning indicated they were seeking only information unfavorable to Mr. Richards and KMPC. They were particularly interested in trying to prove that Mr. Richards was prejudiced against Jews. The investigators were not interested in evidence showing the contrary. (R. 8888-8889, 10367-10369, 12166-12167)

(c) False statement in Commission Counsel's brief.

The bias of the Commission Counsel and his unfair attitude was demonstrated by his insistence upon putting in the Commission's case before the Applicants presented their evidence. He showed evidence of his bias even before the hearing commenced by making false statements in his brief filed with the Commission as the basis for his request that the Commission overrule the order of Hearing Examiner Cunningham that the Applicants should present their case first at the hearing which was scheduled to commence on June 5, 1950.

At page 6 of the Commission Counsel's brief, the following appears:

"The many witnesses necessary for the presentation of the Commission's case have been notified and are in attendance in Los Angeles. In some cases, the attendance of witnesses has been made possible only pursuant to Commission's subpoena, and by the expenditure of substantial sums to reimburse them for transportation to the site of the hearing in Los Angeles. To postpone the introduction of the Commission's case at this time until after such time as the applicant may have completed introduction of its testimony would cause great additional expense to the Commission and would mean

that the Commission witnesses will have been brought to Los Angeles to testify on three separate occasions; —at the first hearing; in order to be present on June 5, 1950, pursuant to the order of testimony established by the pre-hearing conference; and at such later time as the Commission would begin to introduce evidence if the ruling of the Hearing Examiner were allowed to stand.”

This statement of Commission Counsel was one of the grounds relied upon by the Commission itself in overruling Examiner Cunningham.

On page 8 of the Commission’s opinion of June 12th appears the following:

“Arrangements were made by him for the attendance of witnesses at considerable expense to the Commission. * * * We have weighed and considered the conduct of the parties and the effect upon their plans of our ruling herein. It is our opinion that a balancing of the equities in this case requires a conclusion that the original order of proof should remain in effect, at least for the Los Angeles hearing.”

The seriousness of the effect of this order caused Applicants’ counsel to challenge the Commission Counsel to substantiate the above statements, but he refused to do so. (R. 189-200) When the Commission concluded the presentation of its witnesses, on August 29th the record disclosed that not a single Commission witness from out-of-town was in attendance at Los Angeles when the statement was made.

The detriment to the Applicants from the action of the Commission in overruling Examiner Cunningham was very great. From May 4, when the Commission set the date of June 5 for resumption of the hearing, the Applicants worked on a schedule of witnesses in order to have them

present June 5. Prior to the Commission's order of May 23, which granted the Applicants' request for a de novo hearing, the Applicants had already served many subpoenas, and had arranged for the presentation of the testimony of more than 50 witnesses during the week beginning June 5. Arrangements had been made with many more witnesses to appear on specific days during following weeks. Many of these witnesses are very important persons, nationally known, with only limited time for trips to Los Angeles. Specific arrangements had been made with some of these witnesses to testify during the week of June 5. Some witnesses were actually in Los Angeles from out of town on June 5, and remained in Los Angeles until after the order of the Commission reversing Examiner Cunningham. (R. 10890-1) It was not "a balancing of the equities in this case" since it appears that although the Applicants had incurred this expense, and were being deprived of many witnesses because of the Commission's order, the Commission Counsel had not, in fact, incurred the expenses referred to in his brief, and his statements to the Commission were made with knowledge of their falsity and permitted to stand uncorrected when challenged by the Applicants.

The willingness of Commission Counsel to make this false statement was due to desperation, as the first hearing had demonstrated that there was no basis for refusing to renew the licenses, so he used the second hearing as a device for conducting an investigation in the hope that something could be developed to serve as a basis for refusing to renew the license. Instead of calling as witnesses the 23 witnesses relied upon at the first hearing, and although the Examiner had been advised at that hearing that the Commission had presented all of its evidence against KMPC, Commission Counsel called Robert O. Reynolds, general manager of KMPC, as his first witness,

and for 13 days conducted a vicious, partisan, unfair cross-examination. Throughout the examination of Reynolds, Commission Counsel clearly showed he was conducting an investigation, by demanding the production of documents never previously referred to, and making offers of proof without any basis. (R. 1572 for example)

(d) *Personal vindictiveness toward Mr. Richards.*

The Commission Counsel has taken the position that the mere filing of the complaint by the Radio News Club, of which neither the station nor Mr. Richards had any knowledge (except from what appeared in the trade press), was notice to him and to the stations that the Commission would conduct an investigation. He charged that Mr. Richards should not have gone to Detroit on business, in order that he be available for questioning in Los Angeles when the Commission did order the investigation. (R. 467-474) Commission Counsel's role of a prosecutor is evidenced by his charge that Mr. Richards "had a consciousness of guilt" as to the allegations of these discharged former employees (R. 469, 472), and should have known that the Commission would order an investigation.

He fought throughout the hearing to get Mr. Richards himself on the stand, even after the Examiner ruled that he was convinced, even if Mr. Cottone was not, that the Mr. Richards' life would be endangered thereby. The record disclosed that Mr. Richards has been in ill health for years, yet Mr. Cottone would wreck it completely.

(e) *Conduct interfering with fair hearing.*

It is difficult to demonstrate from the typewritten record the unfair attitude throughout the hearing, and the conduct of Mr. Cottone. Applicants' counsel can only call at-

tention to the following motion which they were compelled to make, in the hope of somehow obtaining a fair hearing (R. 9260-9261) :

"While we are waiting for the witness to come in, I would like to make a motion. I will state the grounds of the motion. I do not wish to argue it, but if the motion is denied I will have it for the purpose of an appeal, and I believe I must have this motion on the record.

I move at this time, I make a motion to have recordings made at the hearings here in order that they may be preserved for the benefit of any review by the Commission or by a court in the event that the Commission denies the application to award a license. I make that on the ground that the stenographic record cannot properly reflect the atmosphere under which the hearings are being conducted; it cannot reflect the attitude of Mr. Cottone, his constant interruptions of counsel for the applicant in their attempts to ask questions and present arguments. The stenographers, I have been told, are unable to record when two people talk at the same time, and frequently are unable to record Mr. Cottone's interruptions. Those interruptions are made in a manner which I am sure on the transcription would show the ridicule with which he is treating every effort of the applicants to introduce evidence to establish their right to these licenses, a right which they have under the laws and even under the rules of the Commission.

He is constantly making snide remarks and ridiculing the testimony of the witnesses and ridiculing every effort by counsel for the applicant to present the evidence.

Furthermore, he is constantly arguing with the Examiner, which would appear on a transcription, but cannot possibly be properly recorded in stenographic minutes. He does not simply limit himself to presenting arguments to the Examiner, but he argues

with and against the Examiner, and is constantly speaking in a tone of voice that, if it could be reviewed by a court or the Commission, would indicate that the attitude of Commission's counsel in itself deprived the applicant of their opportunity which they are entitled to of a fair and impartial hearing."

The record is full of instances where Mr. Cottone abused and threatened not only Applicants' counsel, but the Examiner. Even at the prehearing conference, before the hearing began, this was evidenced. He endeavored to prejudice the mind of the Examiner by accusing Applicants' counsel of insulting the Examiner's intelligence (R. 1057) of showing contempt for the Commission's processes and the Examiner's authority (R. 1255, 1416, 8311), and asserting that Applicants had committed criminal offenses (R. 1258). He accused the Examiner of misstating Commission Counsel's purpose (R. 14679-14683, and of trying to "protect" a witness (R. 14727), charged "that your rulings were completely arbitrary and capricious" (R. 9541), "your rulings have been completely inconsistent" (R. 9542), branded him as "extremely arbitrary" (R. 10427), and that his theory was "patently fallacious". (R. 14682)

On one occasion when an objection was overruled he threatened to cross-examine the Mayor of Los Angeles for a week. (R. 8308)

When Applicants' counsel endeavored to obtain the minutes of the Radio News Club, to test the credibility of the complainants, Commission Counsel resorted to every device to prevent it. After the records were produced, and showed that the Commission's witness had lied, Commission Counsel desperately tried to suppress the evidence, and accused Applicants' counsel of "unlawfully searching" the

minute book. (R. 4454-6) Many other examples of this conduct can be shown.

(f) *Commission Counsel objected, and in many cases was sustained, to the receipt of evidence demonstrating that the performance, programming and reputation of KMPC was pre-eminent in the community.*

Commission Counsel objected consistently and repetitiously to any testimony as to the reputation of station KMPC in the community. Despite his efforts, the Applicants were able to show, without contradiction, through representatives of civic enterprises, charitable organizations and veterans groups, through public officials at every level, through spokesmen for the Protestant, Catholic and Jewish religions, through members of the advertising business, through men of stature in the community and through persons who had made surveys of the radio field in the area that KMPC's reputation for fairness and impartiality in every respect was good. Commission Counsel's objections to this evidence finally bore fruit when the Examiner refused to admit any further reputation testimony despite the fact that Commission Counsel continued to refuse any concession as to the station's reputation. (R. 13129-30, 13136)

Commission Counsel objected, and was sustained, to any evidence comparing the record and public approval of KMPC with that of any other stations. For some reason Commission Counsel has insisted that KMPC be tried in a vacuum; he has refused to recognize that evidence of the preeminence of KMPC in the eyes of the community is the best evidence of its service in the public interest, better cer-

tainly than any measurement against some undefined standard of excellence that apparently exists in the mind of Commission Counsel.

(g) *Commission Counsel objected, and was sustained, to any evidence showing the preconceived ideas of witnesses as to which they testified that Mr. Richards' views were improper.*

A witness (Starrels) testified that he was told to use Henry Wallace's name "in every unfavorable way possible" (R. 3386), and to "deprecate" Henry Wallace (R. 3389); he heard Mr. Richards "quite denunciatory" of Henry Wallace. (R. 3522) Yet the Applicants were prevented (R. 3529-3530) from showing that the same witness personally favored Henry Wallace, a point of view which would obviously color his interpretation of news items about Wallace. Starrels testified that Rev. Fifield's talk was anti-union and pro-Republican, (R. 3465) but the Applicants were precluded from inquiring about his own politics. (R. 3765-66)

Another witness (Latimer) testified he was told to read stories concerning labor "which were in opposition to the beliefs and opinions and the tactics" of the C.I.O. and the A.F.L., (R. 2566), and he was cautioned against using too much material about Russia's contribution to the U.N. (R. 2563) The Applicants were precluded from testing the witness' judgment as to the propriety of these alleged instructions by showing that his own viewpoint followed the policies advocated by Communists (R. 2624).

Another witness (Lyon) testified, among other things, that he was told to "belittle" the C.I.O. (R. 4099) But the Applicants were precluded from showing his viewpoint towards unions and other subjects. (R. 12746-48)

- (h) *Commission Counsel was permitted to elicit the personal opinions of character and reputation witnesses and then to try to shake these opinions by hypothetical questions which mischaracterized the evidence and were designed solely to smear KMPC and Mr. Richards.*

Commission Counsel was successful in having the opinions of all of Applicants' witnesses of the station's excellence excluded on direct examination. On cross-examination, his technique was then to disregard the fact that direct examination was confined to reputation and himself to ask for the witness' opinion. If the witness testified to a personal opinion favorable to either Mr. Richards or KMPC, or both, the next step was to cross-examine under the pretext of determining if that opinion would be affected by knowledge of alleged facts which Mr. Cottone purported to state from the record.

In the same way, Mr. Cottone attacked the testimony of Monsignor Anthony J. Brouwers who testified to KMPC's reputation for fairness and impartiality toward all racial and religious groups (R. 12268) and the feeling in the community that the charges are unfair and violative of American principles of freedom of expression. (R. 12272-73) Mr. Cottone was permitted to try to shake this testimony by reference to testimony and documents wholly unrelated to station KMPC (R. 12275-84) on the pretext of ascertaining whether Monsignor Brouwers' testimony would have been affected had he known.

Throughout the presentation of Applicants' case Mr. Cottone propounded to character witnesses hypothetical questions, completely distorting the evidence, based on the assumption that Mr. Richards had obtained extra ration

points during the war without justification. When the Examiner finally called a halt to this practice, remarking that the evidence indicated Mr. Richards' doctor was the one who was responsible for giving a prescription which made it possible for his patient to obtain additional meat, Mr. Cottone vehemently attacked the Examiner (R. 12452-12454) :

"Mr. Cottone: Mr. Examiner, are you stating that it does not make any difference—you say now that I am not entitled to inquire into a witness' concept of the things that he testified to? Are we to accept at their face value what might be the concepts of a witness as to what constitutes patriotism, what constitutes fairness and impartiality? To me that would be entirely absurd. You are permitting a fact to go into evidence here which is at the very best very doubtful as to its competence, and then not permitting us to go to the question of what the basis for bringing the witness in here to testify to it was.

I think that would be the most highly improper kind of exclusion imaginable.

The Presiding Officer: I have permitted it, Mr. Cottone, but I do want to make it clear that I am not satisfied whether it was Mr. Richards who was responsible for these steaks and chops or whether it was the doctor himself who was responsible for them.

I have permitted the inquiry and I am going to continue to permit it. I hope we will keep within the facts—

Mr. Cottone: Mr. Examiner, I—

The Presiding Officer: Let me finish for the benefit of the record only. I desire no courtesy myself. If there are any hypothetical questions, I hoped they will be supported by facts in the record, however.

Mr. Cottone: I am asking my questions, Mr. Examiner. If there is objection to the question, I think we ought to deal with the objections, but I also want to ask that those remarks be stricken from the record as stating a conclusion on a matter which should remain to be decided upon the basis of all the evidence and on the basis of such proposed findings and argument that are put in by counsel.

I take it that you will on reading this realize that your remarks were not at all proper in attempting to characterize the conclusion that you could not have reached on the basis of evidence."

(i) *Suppression of evidence of newscasts*

From the beginning of the first hearing Commission Counsel has charged that KMPC destroyed newscasts prior to September 29, 1947 in order to conceal evidence that the news was slanted; also, that the unavailability of certain scripts after that date was due to the desire of KMPC to suppress them. Commission Counsel tried to make it appear that the Commission had been deprived of evidence of newscasts which would have supported the charges.

The extent of Commission Counsel's unfairness was disclosed when it was discovered that for over a year, he had in his possession recorded disks of KMPC newscasts, together with summaries of other disks which had been destroyed, in an amount sufficient to constitute a fair sampling of the total newscasts through the years. The destroyed disks were destroyed with his written approval. None were introduced, nor was their existence made known by Commission Counsel.

The complete and recently discovered details of this aspect of Commission Counsel's handling of the case are fully set forth in a separate memorandum to be filed with the

Examiner, copies of which will be made available to the Commission, which we request be considered in connection with these motions.

The Applicants have taken the position throughout that even a prosecutor has the duty not to suppress evidence supporting the defendant, and that it particularly is incumbent upon counsel for an administrative agency, preparing a record for eventual submission to that agency, to develop all the facts and to assist in the formulation of a complete record. (R. 3358-3361)

CONCLUSION

The foregoing are the principal points which we believe justify our request that the Commission (1) order the Examiner to conclude the presentation of evidence on the application of KMPC in Docket No. 9468; and either (2) on the basis of the present record grant the applications without further hearing; or (3) direct the Examiner to render an Initial Decision upon the application of KMPC before proceeding with the hearing on the applications of WJR and WGAR.

We have not purported to cover all the points which will be argued in our brief in support of our application in the event this motion is granted, nor have we attempted to cover fully the evidence which is available to support the points here made.

While we state that if the hearing continues, we will offer a vast volume of additional evidence in our support we feel that the record already contains enough to satisfy the Commission that a decision must be rendered in favor of the Applicants.

Since the Commission is required to act in the public in-

terest, it is clear that public interest will be best served by considering these issues now, and saving the taxpayers and the Applicants further unnecessary expense.

Respectfully submitted,

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